TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909

No. 251.

THE INTERSTATE COMMERCE COMMISSION, APPELLANT,

vs.

ALPHEUS B. STICKNEY AND CHARLES H. F. SMITH, RECEIVERS OF THE CHICAGO GREAT WESTERN RAILWAY COMPANY ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

FILED SEPTEMBER 9, 1909.

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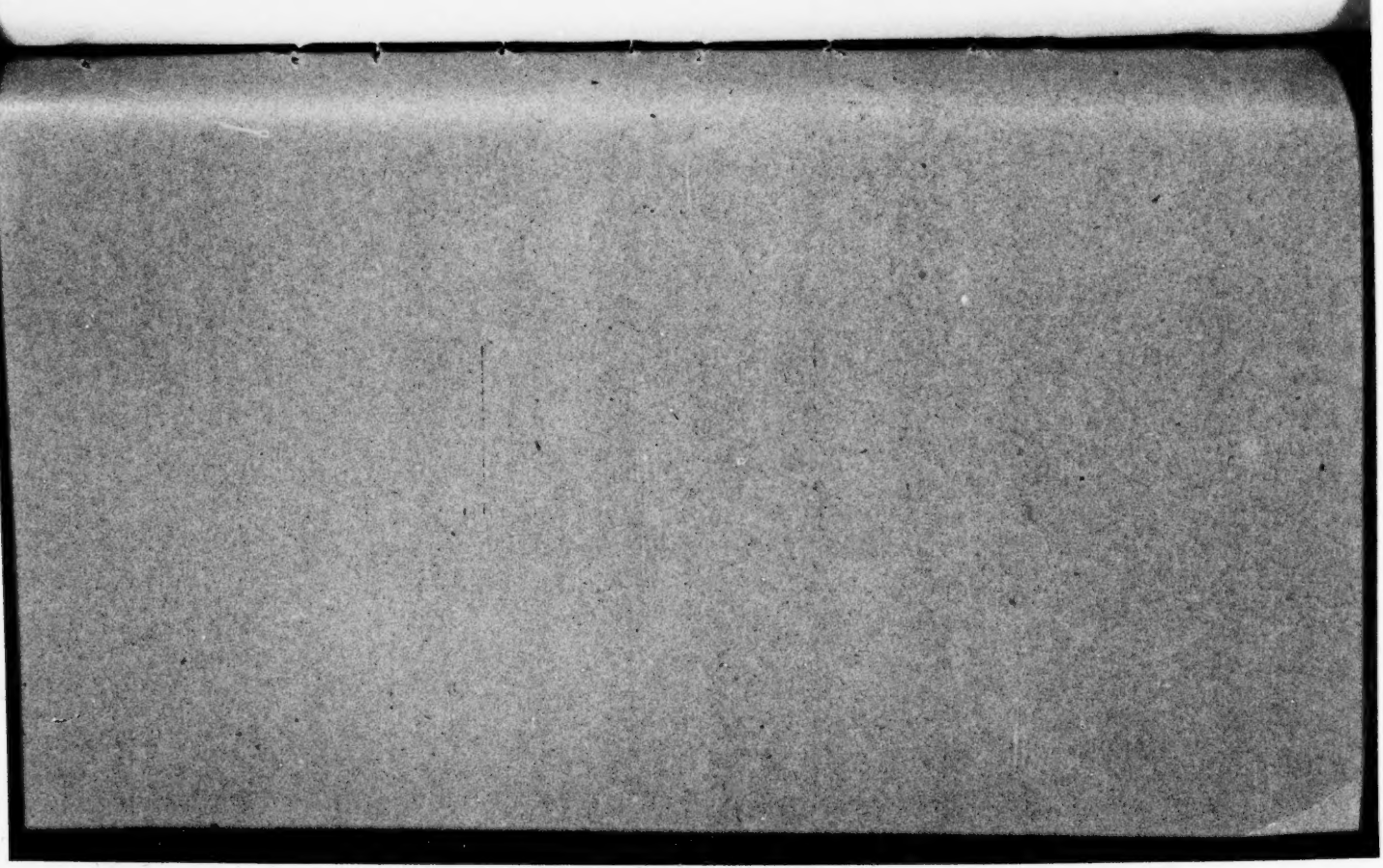

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 533.

THE INTERSTATE COMMERCE COMMISSION, APPELLANT,

vs.

ALPHEUS B. STICKNEY AND CHARLES H. F. SMITH, RECEIVERS OF THE CHICAGO GREAT WESTERN RAILWAY COMPANY ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

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1 UNITED STATES OF AMERICA.

ALPHEUS B. STICKNEY ET AL., COMPLAINANTS,
vs.
THE INTERSTATE COMMERCE COMMISSION, DEFENDANT. | Equity No. 877.

Pleas before the honorable the judges of the Circuit Court of the United States of America for the District of Minnesota, Third Division of the June, A. D. 1908, term of said court, held in the city of St. Paul, in the said district, in the year of our Lord one thousand nine hundred and eight.

Be it remembered that on the 7th day of May, A. D. 1908, came the complainants in the above entitled cause and filed their bill of complaint in the clerk's office of said court, in words and figures following, viz:

2 In the Circuit Court of the United States within and for the District of Minnesota, Third Division.

ALPHEUS B. STICKNEY AND CHARLES H. F. SMITH, receivers of the Chicago Great Western Railway Company; Chicago Great Western Railway Company; Chicago, Burlington & Quincy Railroad Company; Illinois Central Railroad Company; Chicago & Northwestern Railway Company; Chicago, Milwaukee & St. Paul Railway Company; The Chicago & Alton Railroad Company; The Chicago, Rock Island & Pacific Railway Company; and The Atchison, Topeka & Santa Fe Railway Company, complainants,

vs.

THE INTERSTATE COMMERCE COMMISSION, DEFENDANT.

IN EQUITY.

To the honorable judges of the Circuit Court of the United States within and for the District of Minnesota:

3 Alpheus B. Stickney and Charles H. F. Smith, receivers of the Chicago Great Western Railway Company, citizens of the State of Minnesota; Chicago Great Western Railway Company, a corporation organized under the laws of the State of Illinois; Chicago, Burlington & Quincy Railroad Company, a corporation organized under the laws of the State of Illinois; The Illinois Central

Railroad Company, a corporation organized under the laws of Illinois; Chicago & Northwestern Railway Company, a corporation organized under the laws of the State of Illinois; Chicago, Milwaukee & St. Paul Railway Company, a corporation organized under the laws of the State of Wisconsin; The Chicago & Alton Railroad Company, a corporation organized under the laws of the State of Illinois; The Chicago, Rock Island & Pacific Railway Company, a corporation organized under the laws of Illinois and Iowa; and The Atchison, Topeka & Santa Fe Railway Company, a corporation organized under the laws of the State of Kansas, bring this their bill against the Interstate Commerce Commission, established and existing under and by virtue of an act of Congress of the United States. And thereupon your orators complain and say:

That on the eighth day of January, 1908, in a certain cause then duly pending in the Circuit Court of the United States within and for the District of Minnesota, wherein John A. Humbird and
4 others were complainants and Chicago Great Western Railway Company was defendant, after due proceedings having been had for that purpose, in all respects in accordance with law, your orators, Alpheus B. Stickney and Charles H. F. Smith, were duly appointed receivers of Chicago Great Western Railway Company and have duly qualified as such receivers and are now as such receivers in possession of the railway properties of the said Chicago Great Western Railway Company and are now operating the same as such receivers; that Chicago Great Western Railway Company is a corporation duly organized under and by virtue of the laws of the State of Illinois; that Chicago, Burlington & Quincy Railroad Company is a corporation duly organized under the laws of the State of Illinois; that The Illinois Central Railroad Company is a corporation duly organized under the laws of the State of Illinois; that Chicago & Northwestern Railway Company is a corporation duly organized under the laws of the State of Illinois; that Chicago, Milwaukee & St. Paul Railway Company is a corporation duly organized under the laws of the State of Wisconsin; that The Chicago & Alton Railroad Company is a corporation duly organized under the laws of the State of Illinois; that The Chicago, Rock Island & Pacific Railway Company is a corporation duly organized under the laws of Illi-
5 nois and Iowa; and that The Atchison, Topeka & Santa Fe Railway Company is a corporation duly organized under the laws of the State of Kansas; that the defendant, the Interstate Commerce Commission, has been created and established and during all the times herein mentioned has existed under and by virtue of an act of Congress of the United States, entitled, "An act to regulate commerce," approved February 4th, 1887, and the acts amendatory thereof.

Your orators further aver that your orators, Alpheus B. Stickney and Charles H. F. Smith, as receivers as aforesaid, and your orator,

Chicago Great Western Railway Company have their principal operating office in the city of St. Paul, in the district of Minnesota.

Your orators further aver that Chicago Great Western Railway Company, Chicago, Burlington & Quincy Railroad Company, The Illinois Central Railroad Company, Chicago & North-Western Railway Company, Chicago, Milwaukee & St. Paul Railway Company, The Chicago & Alton Railroad Company, The Chicago, Rock Island & Pacific Railway Company, and The Atchison, Topeka & Santa Fe Railway Company are common carriers engaged in the transportation of property by railroad by continuous carriage or shipment from points in the States of Texas, Oklahoma, Kansas, Montana, North Dakota, South Dakota, Nebraska, Wyoming, Colorado, and Indian Territory to Chicago, in the State of Illinois, and have been so engaged for many years last past; and that Alpheus B. Stickney and Charles H. F. Smith, receivers as aforesaid, have been so engaged since the eighth day of January, 1908; that the transportation of live stock from the States aforesaid to the city of Chicago is one of the important constitutents in the business of your orators.

6

Your orators further aver that there have been established and exist in the city of Chicago certain stock yards owned and operated by the Union Stock Yard & Transit Company, known as The Union Stock Yards, which consist of yards, pens, and chutes, together with numerous and extensive buildings, and said Union Stock Yard & Transit Company also owns railway approaches to said stock yards aggregating about two hundred and forty (240) miles of railroad tracks, all of which are within the city of Chicago aforesaid; that the said stock yards are the largest and most extensive in the United States and that adjacent thereto are numerous extensive packing houses, and said stock yards constitute the largest market for the sale and purchase of live stock in the United States.

7

Your orators further aver that the tracks of all of your orators terminate in the city of Chicago and that all of your orators have terminal facilities in said city of Chicago equipped for the business of your orators and sufficient for delivery of all freight consigned for delivery at such terminals of your orators; but your orators aver that none of the railroad tracks owned, controlled, or operated by any of your orators extend to or terminate at the said stock yards of the said Union Stock Yard & Transit Company, and that, in order that your orators may deliver any cars of live stock at said Union Stock Yards, it is necessary that your operators use the lines of track of the said Union Stock Yard & Transit Company, and in some instances, in addition thereto, the tracks of other companies.

Your orators further aver that they have established and duly filed, published, and posted, according to law, tariffs of charges for

their transportation of live stock to the city of Chicago, some of the said rates being for transportation of live stock entirely upon the lines of the company issuing said tariff and a large number of other tariffs being joint tariffs issued by your orators in connection with other companies, which other companies participating in such joint tariffs do not have lines reaching to the city of Chicago.

8 Your orators further aver that the rates fixed in said tariffs for the transportation of live stock to the city of Chicago apply solely to and establish a charge solely for the transportation of said live stock to the terminals upon the tracks of your orators, respectively, in the city of Chicago, and do not apply to or include any charge or compensation whatsoever for any service to be performed by your orators in the transportation and delivery of any live stock beyond the lines of the tracks of your orators.

Your orators further aver that the delivery of live stock at the said Union Stock Yards by your orators involves the distinct and special service by your orators in said city of Chicago of transporting the said live stock beyond the lines of your orators' railway and over the lines of other railroad companies and over the tracks of the said Union Stock Yard & Transit Company, and the unloading of the said live stock at said Union Stock Yards.

Your orators further aver that before the said Union Stock Yards were established all live stock delivered in Chicago by your orators was delivered by each company at its own terminals on its own tracks; and the established rate for the transportation of live stock to Chicago included only the transportation to and delivery at the said terminals of the said companies on their own tracks in the said city of Chicago.

9 Your orators further aver that when the said Union Stock Yards were established and shippers of live stock desired the delivery of their live stock shipped over the lines of your orators' railways at the said Union Stock Yards, your orators did deliver such live stock at the said stock yards beyond the lines of your orators' tracks, without making any charge or receiving any compensation for the said special service of transporting the same beyond the lines of your orators' railways and delivering the same to the said stock yards; although the said Union Stock Yard & Transit Company charged your orators, and your orators paid, twenty-five cents per car for unloading the said live stock at the said stock yards; and said transportation and delivery beyond the lines of your orators' tracks without charge or compensation was continued until 1894.

Your orators further aver that in 1894 the said Union Stock Yard & Transit Company imposed upon all of your orators a trackage charge for the use of its tracks in the transportation of live stock between the lines of your orators' railroads and the said Union Stock Yards; that said trackage charge varied in accordance with the distance traversed over said tracks, being in no case less than

10 eighty cents per car and in some cases as high as one dollar and a half per car.

Your orators further aver that the increased expense involved in the delivery of live stock beyond the lines of your orators' tracks to said stock yards, by reason of the said imposition of said trackage charges by said Union Stock Yard & Transit Company and by reason of enhanced complexity and general cost of such special service made it impracticable for your orators longer to continue to make said delivery of said live stock beyond the lines of their respective railroad tracks without any charge or compensation therefor; thereupon, your orators, taking into account the charges exacted by the said Union Stock Yard & Transit Company, as aforesaid, and the expense to your orators of the transportation and delivery of said live stock beyond their lines to said stock yards, issued, published, filed, and posted, in all respects according to law, their separate tariffs, showing that they would charge shippers of live stock the sum of two dollars per car for the special service of transporting each car of live stock beyond the lines of their respective roads and making delivery thereof at said Union Stock Yards, the said provision of said tariffs being substantially as follows:

11 "GENERAL FREIGHT DEPARTMENT,
"*May 19, 1894.*

"*To all Agents:*

"Taking effect June 1, 1894, the tariffs on live stock and all other traffic received from or delivered to the Union Stock Yards, and all industries located on the tracks of the Union Stock Yards Ry., the Indiana State Line Ry., or the Northern Indiana R. R. at Hammond, Ind., will in addition to the rates named to or from Chicago, be subject to a terminal charge of $2 per car.

"This charge must in all cases be added to the through rate and must be shown separately on the waybill as miscellaneous earnings and a delivering expense; it must also be provided for and shown in contracts and bills of lading.

"The foregoing will apply as a supplement to all tariffs issued by this company, also to all joint tariffs issued by connections and applying over this line. It will supersede entirely rule 7 in the routing and waybilling instructions governing freight destined to and from Chicago locally or points beyond Chicago (C. & N. W. G. F. D. No. 7575; C., St. P., M. & O. G. F. D. No. 1715; F. E. & M. V., and S. C. & P. G. F. D. No. 829 of 1893)."

Your orators further aver that the said tariffs were intended by your orators and their officers to mean, and your orators and
12 their officers understood the said tariffs to mean, that the said charge of two dollars per car was the sole and only charge and compensation made or received by your orators for the service

of transporting said cars of live stock beyond the lines of their respective roads and making delivery of the same at said Union Stock Yards; and that said charge of two dollars per car for said service was segregated from and entirely separate from the charge in the tariffs for the transportation of said live stock from the point of the origin of the shipments to a delivery point on the tracks of your orators in the city of Chicago; and in making, issuing, publishing, and filing the said terminal tariffs your orators and their respective officers intended to provide, and believed that the said tariffs did provide, and construed the said tariffs to provide, that the charge made for the transportation of live stock from the points of origin of the shipments to the said city of Chicago was solely and exclusively for the service involved in the transportation of said live stock from said points of origin of the shipments to a point of delivery on the tracks of your orators, respectively, in the city of Chicago; and that the said last-named charge did not cover or carry any compensation whatever for the transportation and delivery of such live stock beyond the lines of the railroads of your orators, and
13 did not cover or carry any compensation whatever for the transportation and delivery of said live stock from the lines of your orators in the city of Chicago to the said Union Stock Yards.

Your orators further aver that when the said tariffs were issued, published, and filed in 1894, as aforesaid, there was no change made in the charge made in earlier tariffs for the transportation of live stock from the points of the origin of the shipments to the tracks of the railroads of your orators in the city of Chicago, and no change made in the joint rates or tariffs issued, published, and posted by your orators in connection with other railroad companies, in so far as the same fixed the charge for the transportation of live stock from the points of origin of the shipments to the tracks of your orators in the city of Chicago, nor was there any change made in the division or the adjustment of the proportions of said charge made in said joint tariffs between the companies issuing the same. And your orators further aver that at no time was any joint rate agreed upon, issued, published, or posted by your orators and other railroad companies for the transportation of live stock from the points of the origin of the shipments to the city of Chicago wherein any division of the rates between the companies making the
14 same was based upon any consideration whatever of the cost and expense of transporting such live stock beyond the tracks of your orators in the city of Chicago and making delivery thereof at the Union Stock Yards aforesaid.

Your orators further aver that thereafter and since the year 1902, in order that there be no possible misconception of the meaning of the said tariffs and of the purpose of your orators in promulgating the same, there were inserted in the tariffs regularly issued, filed, published, and posted by your orators, as required by law, further pro-

visions making clear the absolute segregation and separation of the charge in said tariffs for the transportation of live stock from the points of the origin of the shipments to a point of delivery on the lines of your orators in the city of Chicago, from the charge in said tariffs for the transportation and delivery of the said live stock beyond the tracks of your orators in the city of Chicago to the Union Stock Yards aforesaid. The provision so inserted in the tariffs issued, published, and posted, as aforesaid, by your orator, The Chicago & North-Western Railway Company, was as follows:

"The live stock station and stock yards of this company in Chicago are located at Mayfair, and the rates named herein apply only
15 to live stock intended for delivery at, or received and transported from the stock yards of the company at Mayfair, in Chicago.

"Upon all live stock consigned to or from the Union Stock Yards in Chicago, or industries located on the Union Stock Yards Railway or the Indiana State Line Railway, and transported and delivered to or received and transported from said Union Stock Yards or said industries located on said U[illegible] Stock Yards Railway, or the Indiana State Line Railway, aforesaid, a charge of two dollars ($2.00) per car will be made for the special and separate service of transporting such cars to said Union Stock Yards or to said industries on said Union Stock Yards Railway, or the Indiana State Line Railway, from this company's own rails, or of transporting such cars from said Union Stock Yards or said industries on said Union Stock Yards Railway, or the Indiana State Line Railway to this company's own rails."

Your orators further aver that thereafter substantially similar provisions were inserted in all the tariffs issued by your orators applying to the transportation of live stock. And your orators further aver that such provisions have been constantly maintained in all the published tariffs of your orators applying to the transportation of live stock, and are now being maintained in all the tariffs in force, issued, filed, published, and posted by your orators for the transportation of live stock.

16 Your orators further aver that from the year 1894 to the present time there has been a segregation and separation under the tariffs of your orators for the transportation of live stock of the charge laid in the tariffs of your orators for the transportation from the points of the origin of the shipments to a point of delivery on the tracks of your orators in the city of Chicago, from the charge laid in said tariffs for the transportation and delivery of said live stock beyond the tracks of your orators in the city of Chicago and to the Union Stock Yards aforesaid; with the result that the charge laid in the tariffs for the transportation of live stock from the points of the origin of the shipments to the point of delivery upon the tracks of your orators in the city of Chicago was laid and collected solely

and exclusively for the service rendered in transporting such live stock from the points of the origin of the shipments to the point of delivery upon the tracks of your orators in the city of Chicago; and the charge laid in the tariffs for the transportation and delivery of live stock beyond the tracks of your orators and to the Union Stock Yards aforesaid, was laid and collected solely and exclusively for the service of transporting such live stock beyond the tracks of your orators and delivering the same at the Union Stock Yards aforesaid.

17 Your orators further aver that on the tenth day of December, 1907, the defendant, the Interstate Commerce Commission, entered an order requiring your orators to cease and desist from charging the said terminal charge of two dollars per car for the transportation of live stock beyond the tracks of your orators in the city of Chicago, and for the delivery thereof at the Union Stock Yards aforesaid, and requiring your orators to establish and put in force for said service a charge of one dollar per car, the said order being in words and figures as follows, to wit:

"It is ordered, that the defendants, The Chicago, Burlington & Quincy Railroad Company; Chicago Great Western Railway Company; Chicago & North-Western Railway Company; Chicago, Milwaukee & St. Paul Railway Company; Chicago & Alton Railroad Company; Chicago, Rock Island & Pacific Railway Company; Atchison, Topeka & Santa Fe Railway Company; and Illinois Central Railroad Company, be, and they are hereby, required to cease and desist on or before the 1st day of February, 1908, from exacting for the delivery of live stock at the Union Stock Yards, in Chicago, Ill., with respect to shipments of live stock transported by them from points outside of that State, their present terminal charge of $2 per car.

"It is further ordered, that said defendants be, and they are hereby, notified and required to establish and put in force on or

18 before the 1st day of February, 1908, and apply thereafter during a period of not less than two years, for the delivery of live stock at the Union Stock Yards, in said Chicago, with respect to shipments of live stock transported by them from points outside the State of Ilinois, a terminal charge which shall not exceed $1 per car, if any terminal charge is maintained by them."

Your orators further aver that thereafter by orders duly entered by said defendant, the Interstate Commerce Commission, the time for the compliance by your orators with the above mentioned order was duly and regularly extended until the fifteenth day of May, 1908. Your orators further aver that the said defendant, the Interstate Commerce Commission, served the said order by mailing a copy thereof to the principal officers of your orators, respectively, and due service of the orders extending the time for the compliance by your orators with the said order has been made on your orators.

Your orators further aver that the said order of the said defendant, the Interstate Commerce Commission, was made upon a complaint filed with said body by the Cattle Raisers' Association of Texas and the Chicago Live Stock Exchange, to which complaint answers were filed by your orators and testimony adduced by the said parties.

19 Your orators further aver that the actual cost to each of your orators of the service of transporting cars of live stock beyond the tracks of your orators in the city of Chicago to the Union Stock Yards aforesaid and there making delivery thereof exceeds, and ever since 1894 has exceeded, in each instance the sum of two dollars per car, the present terminal charge therefor, and that under the present tariff and charge of two dollars per car for the said service your orators and each of them are now rendering the said service to shippers of live stock delivered at said Union Stock Yards of transporting the said cars of live stock beyond the tracks of your orator in Chicago to the Union Stock Yards, and there making delivery thereof at a charge less than the actual expense to your orators, respectively, necessarily incurred in the performance of the said service. Your orators further aver that the said order of the said defendant, the Interstate Commerce Commission, in requiring your orators to desist from the said charge of two dollars per car for the transportation of live stock beyond the tracks of your orators in the city of Chicago and to the Union Stock Yards aforesaid, and there making delivery thereof, is unreasonable, unjust, oppressive, and unlawful, in that, among other things, the said order prohibits your orators from charging for the service aforesaid the said sum

20 of two dollars per car, as above set forth, which is less than the actual expense to your orators necessarily incurred in the performance of the service for which, as aforesaid, the said charge is laid.

Your orators further aver that the said order of the said defendant, the Interstate Commerce Commission, in requiring your orators to establish and put in force a tariff laying a charge for the service of transporting cars of live stock beyond the tracks of your orators' roads in the city of Chicago and to the Union Stock Yards, as aforesaid, and there making delivery of the same, of not more than one dollar per car is unreasonable, unjust, oppressive, and unlawful, in that, among other things, the said order attempts to compel your orators to perform the service aforesaid for a charge of one dollar per car, which sum, as hereinabove set forth, is less than one-half of the expense actually incurred and sustained by your orators in the performance of the service for which the said charge is laid.

Your orators further aver that, by reason of the facts aforesaid, the said charge of two dollars per car now maintained by your orators by their tariffs for the service of transporting cars of live stock beyond the tracks of your orators in the city of Chicago to the Union Stock Yards aforesaid, and there making delivery of

said live stock, is a just and reasonable charge, and one proper to be made, and is a charge which yields no profit to your orators or any of them from the performance of the service for which the said charge is laid.

Your orators further aver that if the said order of the said defendant, the Interstate Commerce Commission, should become effective and go into effect and be enforced, it would compel your orators to perform the service of transporting the cars of live stock from the tracks of your orators in the city of Chicago to the Union Stock Yards aforesaid, and there make delivery of the same, at a charge which would be less than one-half of the actual cost and expense necessarily incurred and sustained by your orators in the performance of said service, and it would thereby deprive your orators of their property without due process of law and deny to your orators the equal protection of the laws, all in violation of the Constitution of the United States.

Your orators further aver that the said order of the defendant, the Interstate Commerce Commission, should not be enforced because the said Interstate Commerce Commission has heretofore expressly found as a fact that a charge of two dollars per car for the service of transporting live stock from the tracks of your orators in the city of Chicago to the said Union Stock Yards, and there making delivery thereof, was less than the actual expense incurred by your orators in rendering the said service. And your orators aver that said finding of fact, so made by the said defendant, the Interstate Commerce Commission, has never been set aside, reversed, or in any way modified; but, on the contrary, your orators aver that said defendant, the Interstate Commerce Commission, within the last few months, and in the very proceeding in which said order herein complained of was entered, has reiterated the said finding and recognized the continuing existence of the facts so found.

Your orators further aver that the number of cars of live stock transported by your orators from their tracks to the Union Stock Yards, as aforesaid, and there delivered by your orators is very large, exceeding in number three hundred thousand cars per year, and that, if the said order of the said defendant, the Interstate Commerce Commission, is allowed to remain and to become and be effective and enforced, the same will entail upon your orators a loss of more than three hundred thousand dollars per year, which said loss will be absolute and complete to your orators.

Your orators further aver that, if the said order of the said defendant, The Interstate Commerce Commission, is allowed to become and be effective, very many suits for penalties will be brought against each one of your orators in various of the judicial districts of the United States, and very many suits will be brought against each of your orators by many persons interested in said order and its enforcement and claiming to be injured by the

acts of your orators unless said order is obeyed, which said suits will be brought and prosecuted as aforesaid by very many persons in many of the judicial districts of the United States against each of your orators; whereby your orators and each of them will be subjected to a great multiplicity of suits and great loss and damage will be inflicted upon your orators and each of them, all of which acts and doings will greatly injure and embarrass your orators and each of them in the transaction of their business.

Your orators further aver that notwithstanding the facts aforesaid, the said defendants, The Interstate Commerce Commission, maintains and intends to maintain, and will, unless the same is enjoined or suspended by the order of this honorable court, maintain the said order as an effective order; and institute, or suffer to be instituted, the judicial proceedings aforesaid, which acts and doings are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orator.

24 Your orators, therefore, pray that upon the filing of this bill a temporary or interlocutory order be entered herein suspending the said order of the said Interstate Commerce Commission and restraining the enforcement of the said order of the said commission and restraining the said commission from taking any steps or instituting any proceedings to enforce the said order, and that upon a final hearing of this cause a decree be entered herein setting aside and annulling the said order of the said Interstate Commerce Commission and perpetually enjoining the enforcement of the said order and perpetually enjoining the said defendant and its members, their agents, servants, and representatives, from enforcing the said order and from taking any steps or instituting any proceedings for the enforcement of the said order.

Your orators further pray that, if any delay intervenes between the filing of this bill and the issuance of a temporary or interlocutory order, as prayed for herein, an order be issued herein suspending the said order of the said Interstate Commerce Commission and enjoining the enforcement thereof until the hearing and final determination of the application for the temporary or interlocutory order prayed for herein.

25 And your orators further pray that such other and further relief be granted in the premises as justice and equity may require.

Your orators further pray that your honors grant unto your orators a writ of subpœna of the United States of America, directed to the said Interstate Commerce Commission, commanding it at a certain day and under a certain penalty therein to be specified, personally to be and appear before your honors in this honorable court, and then and there full, true and complete answer make to all and singular the premises; but not under oath (an answer under oath being hereby expressly waived) and to stand to and abide such order and decree

herein as to your honors shall seem meet and agreeable to equity and good conscience.

And your orators will ever pray, etc.

A. B. STICKNEY,
CHAS. H. F. SMITH,
Receivers of the Chicago Great Western Railway Company.
CHICAGO GREAT WESTERN RAILWAY COMPANY,
By A. B. STICKNEY, *President.*
CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY,
By CHESTER M. DAWES,
Its General Solicitor.

26 ILLINOIS CENTRAL RAILROAD COMPANY,
By J. M. DICKINSON,
Its General Counsel.

[Corporate seal.]
CHICAGO & NORTHWESTERN RAILWAY COMPANY,
By L. W. BOWERS,
Its General Counsel.
CHICAGO, MILWAUKEE & ST. PAUL RAILROAD COMPANY,
By J. H. HILAND,
Second Vice-President.
CHICAGO & ALTON RAILROAD COMPANY,
By C. W. KING,
General Freight Agent.
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY,
By R. A. JACKSON,
Its First V. P. and General Solicitor.

[Corporate seal.]
ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY,
By GEO. T. NICHOLSON,
Third Vice-President.

WILLIAM D. MCHUGH,
Solicitor for Complainants.

WILLIAM D. MCHUGH,
Of Counsel.

27 STATE OF MINNESOTA,
County of Ramsey, ss:

Alpheus B. Stickney, being first duly sworn according to law, deposes and says that he is one of the receivers of the Chicago Great Western Railway Company and one of the complainants in the above entitled cause; that he is also president of said company; that he knows the facts stated in the foregoing bill of complaint and that the said facts are true.

ALPHEUS B. STICKNEY.

Subscribed and sworn to before me this 7th day of May, A. D. 1908.

[Notarial seal.]

A. G. BRIGGS,
Notary Public,
Ramsey County, Minnesota.

My commission expires July 3d, 1908.

STATE OF ILLINOIS,
County of Cook, ss:

Chester M. Dawes, being first duly sworn, says that he is the general solicitor of the Chicago, Burlington & Quincy Railroad Company, one of the complainants in the above entitled cause; that he
28 knows the facts stated in the above and foregoing bill of complaint, and that the said facts are true.

CHESTER M. DAWES.

Subscribed and sworn to before me this 6th day of May, A. D. 1908.
[Notarial seal.] J. H. PETTIBONE,
Notary Public.

STATE OF ILLINOIS,
County of Cook, ss:

J. M. Dickinson, being first duly sworn, says that he is the general counsel of the Illinois Central Railroad Company, one of the complainants in the above entitled cause; that he knows the facts stated in the above and foregoing bill of complaint and that the said facts are true.

J. M. DICKINSON.

Subscribed and sworn to before me this 6th day of May, A. D. 1908.
[Notarial seal.] ANDREW P. HAMBURG,
Notary Public.

29 STATE OF ILLINOIS,
County of Cook, ss:

Samuel A. Lynde, being first duly sworn, says that he is the general solicitor of the Chicago & North-Western Railway Company, one of the complainants in the above-entitled cause; that he knows the facts stated in the above and foregoing bill of complaint, and that the said facts are true.

SAMUEL A. LYNDE.

Subscribed and sworn to before me this 6th day of May, A. D. 1908.
[Notarial seal.] FREDERIC BURNHAM,
Notary Public.

STATE OF ILLINOIS,
County of Cook, ss:

J. H. Hiland, being first duly sworn, says that he is the 2nd vice-president of the Chicago, Milwaukee & St. Paul Railway Company, one of the complainants in the above-entitled cause; that he knows the facts stated in the above and foregoing bill of complaint, and that the said facts are true.

J. H. HILAND.

30 Subscribed and sworn to before me this sixth day of May, A. D. 1908.
[Notarial seal.] W. D. MILLARD,
Notary Public.

POOR COPY

STATE OF ILLINOIS,
County of Cook, ss:

C. W. King, being first duly sworn, says that he is the general freight agent of the Chicago & Alton Railroad Company, one of the complainants in the above-entitled cause; that he knows the facts stated in the above and foregoing bill of complaint, and that the said facts are true.

C. W. KING.

Subscribed and sworn to before me this 6th day of May, A. D. 1908.
[Notarial seal.] FREDERIC BURNHAM,
Notary Public.

STATE OF ILLINOIS,
County of Cook, ss:

H. Gower, being first duly sworn, says that he is the freight
31 traffic manager of the Chicago, Rock Island & Pacific Railway Company, one of the complainants in the above-entitled cause; that he knows the facts stated in the above and foregoing bill of complaint, and that the said facts are true.

H. GOWER.

Subscribed and sworn to before me this 6th day of May, A. D. 1908.
[Notarial seal.] CHAS. F. SCHWARZ,
Notary Public.

STATE OF ILLINOIS,
County of Cook, ss:

George T. Nicholson, being first duly sworn, says that he is the 3rd vice-president of the Atchison, Topeka & Santa Fe Railway Company, one of the complainants in the above-entitled cause; that he knows that the facts are true.

GEO. T. NICHOLSON.

Subscribed and sworn to before me this 6th day of May, A. D. 1908.
[Notarial seal.] FREDERIC BURNHAM,
Notary Public.

(Endorsed:) Bill of complaint. Filed May 7th, A. D. 1908. Henry D. Lang, clerk.

Thereafter and on the same day the following præcipe for chancery subpœna was filed in said cause, viz:

32 Circuit Court of the United States, District of Minnesota, Third Division.

ALPHEUS B. STICKNEY ET AL.
vs.
THE INTERSTATE COMMERCE COMMISSION.
} Præcipe for chancery subpœna.

To the clerk of the above-named court:

Please issue a chancery subpœna in the above-entitled cause returnable at the June, 1908, rule day.

WILLIAM D. MCHUGH,
Solicitor for Complainants.

First Nat. Bk. Bldg., Omaha, Neb.

(Endorsed:) Præcipe for chancery subpœna. Entered C. R. "B," page 27. Filed May 7, 1908. Henry D. Lang, clerk.

Thereafter and on the same day the following order for chancery subpœna was entered of record in said cause, viz:

33 U. S. Circuit Court, District of Minnesota, Third Division. Chancery Common Rule and Order Book.

1908. May 7.

A. B. STICKNEY ET AL.
vs.
THE INTERSTATE COMMERCE COMMISSION. } Equity No. 877.

The complainant having filed a bill in equity in this cause, on application of William D. McHugh, solicitor for said complainants, it is hereby ordered that a chancery subpœna issue as therein prayed. Common Rule and Order Book "C," page 7.

And afterwards on the same day the following chancery subpœna was issued out of and under the seal of said court, viz:

34 United States of America, District of Minnesota, Third Division.

The President of the United States of America to the Interstate Commerce Commission, greeting:

You are hereby commanded to be and appear at rules, to be held at the office of the clerk of the Circuit Court of the United States for the District of Minnesota, on the first Monday of June, next, at the city of Saint Paul, then and there to answer the bill of complaint of Alpheus B. Stickney and Charles H. F. Smith, receivers of the Chicago Great Western Railway Company et al., citizens of various States of the United States of America, filed against you on the 7th day of May, A. D. 1908. Hence fail not.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 7th day of May, 1908.

Issued at my office in the city of St. Paul under the seal of said Circuit Court, the day and year last aforesaid.

[Seal of court.] HENRY D. LANG, *Clerk.*

Memorandum: The above named defendant to enter its appearance in this suit in the clerk's office aforesaid, on or before the day at which this writ is returnable, otherwise the bill may be taken pro confesso.

HENRY D. LANG, *Clerk.*

WILLIAM D. MCHUGH,
Complainants' Solicitor.

35 (Endorsed:) Chancery subpœna, returnable to June rules, 1908.

Served the within writ on the Interstate Commerce Commission by service of the copy of said writ on Martin A. Knapp, chairman of said commission, personally, this 9th day of May, 1908.

AULICK PALMER,
U. S. Marshal for the District of Columbia.

Filed May 13th, 1908. Henry D. Lang, clerk.

Thereafter and on May 11th, 1908, the following certificate of the Attorney-General was filed in said cause, viz:

36 In the Circuit Court of the United States, within and for the District of Minnesota, Third Division.

A. B. STICKNEY AND CHARLES H. F. SMITH, receivers of the Chicago, Great Western Railway Company; Chicago, Burlington & Quincy Railroad Company; The Illinois Central Railroad Company; Chicago & Northwestern Railway Company; Chicago, Milwaukee & St. Paul Railway Company; The Chicago & Alton Railroad Company; The Chicago, Rock Island & Pacific Railway Company; and The Atchison, Topeka & Santa Fe Railway Company, complainants, *vs.* THE INTERSTATE COMMERCE COMMISSION, defendant.	In Equity No. 877.

To the clerk of the United States Circuit Court in and for the District of Minnesota, at St. Paul:

CERTIFICATE OF THE ATTORNEY-GENERAL.

I, Charles J. Bonaparte, Attorney-General of the United States, hereby certify that the above-entitled cause, which has been filed in your court, being a suit in equity to enjoin and set aside an order of the Interstate Commerce Commission, prescribing the charges to be made by the aforesaid railroads as a terminal charge for the delivery of live stock at the Union Stock Yards of Chicago, is a case of general public importance and comes under the provisions of the act to expedite hearings and determination of suits in equity, approved February 11, 1903, and made applicable to this case by virtue of the provisions of section 16 of the act to regulate commerce, as amended and
37 approved June 29, 1906, and I therefore request that the same be given precedence over other causes and be in every way expedited, and that the same be assigned for hearing at the earliest practicable day, before not less than three of the circuit judges of the Circuit Court; and in case the judges sitting in such cause shall be divided in opinion, that the case shall be certified to the Supreme

Court for review in like manner as if taken there upon appeal, as provided by the said act of February 11, 1903.

You will, therefore, service notice hereof to the circuit judges of said court as provided in the said act of February 11, 1903.

CHARLES J. BONAPARTE,
Attorney-General.
By HENRY M. HOYT,
Solicitor-General and Acting Attorney-General.

WASHINGTON, *May 9, 1908.*

(Endorsed:) Certificate of the Attorney-General under the acts of February 11, 1903, and June 29, 1906. Filed May 11th, 1908. Henry D. Lang, clerk.

Thereafter, and on the same day, the following certificate of Henry D. Lang, clerk, was filed in said court, viz:

38 In the Circuit Court of the United States within and for the District of Minnesota, Third Division.

A. B. STICKNEY AND CHARLES H. F. SMITH, RECEIVERS of the Chicago Great Western Railway Company; Chicago Great Western Railway Company; Chicago, Burlington & Quincy Railroad Company; The Illinois Central Railroad Company; Chicago & Northwestern Railway Company; Chicago, Milwaukee & St. Paul Railway Company; The Chicago & Alton Railroad Company; The Chicago, Rock Island & Pacific Railway Company; and The Atchison, Topeka & Santa Fe Railway Company, complainants,

vs.

THE INTERSTATE COMMERCE COMMISSION, DEFENDANT.

In equity.

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I, Henry D. Lang, clerk of the Circuit Court of the United States for the District of Minnesota, do hereby certify that on the 11th day of May, A. D. 1908, I personally handed to and left with the Honorable Walter H. Sanboen and the Honorable William C. Hook, two of the United States circuit judges for the Eighth Circuit, at St. Paul, Minnesota, a duly certified copy of the certificate of the Attorney-General, under the acts of February 11th, 1903, and June 29th, 1906, this day filed in the above entitled cause, and that on the same day I mailed a certified copy of said certificate to the Honorable Willis Van Devanter by enclosing a copy thereof in an envelope addressed to him at Cheyenne, Wyoming, and depositing the same in

the post-office at St. Paul, Minnesota, and that on the
39 same day I also mailed a duly certified copy of said certificate to the Honorable Elmer B. Adams by enclosing the same in an envelope addressed to him at St. Louis, Missouri, and depositing the same in the post-office at said St. Paul, Minnesota.

In witness whereof I have hereunto set my hand and official seal this 11th day of May, A. D. 1908.

[SEAL.] HENRY D. LANG, *Clerk.*

(Endorsed:) Certificate of Henry D. Lang, clerk, of delivery of Attorney-General certificate to U. S. circuit judges. Filed May 11th, 1908. Henry D. Lang, clerk.

Thereafter and on May 13th, 1908, the following notice of motion for a temporary restraining order, etc., was filed in said cause, viz:

40 In the Circuit Court of the United States, within and for the District of Minnesota, Third Division.

A. B. STICKNEY AND CHARLES H. F. SMITH, RECEIVERS of the Chicago Great Western Railway Company; Chicago Great Western Railway Company; Chicago, Burlington & Quincy Railroad Company; The Illinois Central Railroad Company; Chicago & Northwestern Railway Company; Chicago, Milwaukee & St. Paul Railway Company; The Chicago & Alton Railroad Company; The Chicago, Rock Island & Pacific Railway Company; and The Atchison, Topeka & Santa Fe Railway Company, complainants.	In equity No. 877.
vs.	
THE INTERSTATE COMMERCE COMMISSION, DEFENDANT.	

To the Interstate Commerce Commission:

You are hereby notified that in the above entitled cause a bill has been filed in the Circuit Court of the United States within and for the District of Minnesota, wherein the above named complainants pray a decree of said court setting aside and annulling that certain order entered by you, the said Interstate Commerce Commission, on or about the tenth day of December, 1907, in that certain proceeding then pending before you known as No. 939, wherein the Cattle Raisers' Association of Texas and the Chicago Live Stock Exchange were complainants and the Chicago, Burlington & Quincy Railroad Company, Chicago Great Western Railway Company, the Chicago & Northwestern Railway Company, the Chicago, Milwaukee & St. Paul Railway Company, the Chicago & Alton Railroad Com-
41 pany, the Chicago, Rock Island and Pacific Railway Company,

the Atchison, Topeka and Santa Fe Railroad Company, and the Illinois Central Railroad Company were respondents.

You are hereby notified that on the 14th day of May, 1908, at 10 a. m., before the said court at the federal court room in the city of St. Paul, State and District of Minnesota, the complainants in said suit will apply to said court for a temporary or interlocutory order suspending the above mentioned order entered by you as aforesaid and enjoining the enforcement thereof, and the said application will be based upon the bill of complaint, duly verified, a copy of which is attached hereto.

You are further notified that, if any delay intervenes in the issuance of said temporary or interlocutory order by said court on said 14th day of May, 1908, the complainants in said suit will at said time and place pray the issuance of an order suspending the above mentioned order entered by you and enjoining its enforcement until the hearing and final determination of the said application for a temporary or interlocutory order, as aforesaid.

WILLIAM D. MCHUGH,
Solicitor for complainants above named,
413 First National Bank Bldg., Omaha, Nebraska.

42 Service of a copy of the within notice with copy of the bill of complaint therein referred to is hereby acknowledged this 8th day of May, 1908, at the office of the Interstate Commerce Commission, in the city of Washington, D. C.

MARTIN A. KNAPP,
Chairman Interstate Commerce Commission.

(Endorsed:) Notice of motion for a temporary restraining order, etc. Filed May 13th, 1908. Henry D. Lang, clerk.

Thereafter and on the 15th day of May, 1908, the following receipt of Hon. Elmer B. Adams was filed in said cause, viz:

43 Hon. Walter H. Sanborn, St. Paul, Minn.
Hon. Willis Van Devanter, Cheyenne, Wy.
Hon. William C. Hook, Leavenworth, Kans. } Circuit Judges.
Hon. Elmer B. Adams, St. Louis, Mo.
Hon. Wm. Lochren, Minneapolis, Minn. } District Judges.
Hon. Page Morris, Duluth, Minn. }

General terms.
First Tuesday in June and first Tuesday in December.
Rule day. First Monday in each month.

[United States Circuit Court, District of Minnesota. Henry D. Lang, clerk. Louis B. Trott, deputy.]

ST. PAUL, *May 11, 1908.*

Hon. ELMER B. ADAMS,
U. S. Circuit Judge, St. Louis, Mo.

MY DEAR JUDGE: I hand you herewith a certified copy of certificate of the Attorney-General under the acts of February 11, 1903,

and June 29, 1906, filed to-day in case No. 877, equity, Alpheus B. Stickney et al. v. Interstate Commerce Commission. Kindly acknowledge receipt thereof.

Sincerely, yours. HENRY D. LANG, *Clerk.*

Dictated.
Enc.

Received the above May 13, '08.

ELMER B. ADAMS.

(Endorsed:) Receipt of Hon. Elmer B. Adams, for certified copy of certificate of Attorney-General. Filed May 15th, 1908. Henry D. Lang, clerk.

Thereafter and on May 28th, 1908, the following affidavit of H. R. McCullough was filed in said cause, viz:

44 STATE OF ILLINOIS,
County of Cook, ss:

H. R. McCullough, being first duly sworn, on oath says that he the vice-president of the Chicago & Northwestern Railway Company, one of the complainants in the above entitled cause.

Affiant further says that he is familiar with the tariff of said company, duly filed, issued, and published according to law, showing the charge for transportation of live stock.

Affiant further says that the following provision of said tariff, to wit:

"The live stock station and stock yards of this company in Chicago are located at Mayfair, and the rates named herein apply only to live stock intended for delivery at or received and transported from the stock yards of the company at Mayfair, in Chicago.

"Upon all live stock consigned to or from the Union Stock Yards in Chicago or industries located on the Union Stock Yards Railway, or the Indiana State Line Railway, and transported and delivered to or received and transported from said Union Stock Yards or said industries located on said Union Stock Yards Railway, or the Indiana State Line Railway aforesaid, a charge of two dollars ($2.00) per car will be made for the special and separate service of transporting such cars to said Union Stock Yards or to said industries on said Union Stock Yards Railway, or the Indiana State Line Railway, from this company's own rails or of transporting such cars from said Union Stock Yards, or said industries on said Union Stock Yards Railway, or the Indiana State Line Railway, to this company's own rails,"

has been in the tariffs filed, issued, and published by said company for the transportation of live stock since the year 1904.

45 Affiant further says that the said tariff provision is construed by the officials of said company to mean, and that the purpose and object of inserting the said provision in the said tariffs was that

it should mean, that the charge laid in said tariffs of $2.00 per car for the transportation and delivery of live stock beyond the tracks of said company and to the Union Stock Yards in Chicago was separated and segregated from the charge laid in the said tariffs for the transportation of live stock from the points named therein to the tracks and stock yards of said company at Mayfair, in Chicago; and that the purpose and object of said provision in said tariffs was that the charges therein laid for the transportation of live stock from the points therein named to the tracks and yards of said company at Mayfair, in Chicago, was charged and collected solely and exclusively for the transportation of such live stock from said points to the tracks and yards of said company at Mayfair; and that said charge of $2.00 per car laid in said tariffs for the transportation and delivery of live stock beyond the tracks of said company to the Union Stock Yards aforesaid was laid and collected solely and exclusively for the service of transporting such live stock beyond the tracks of such company and delivering the same to the Union Stock Yards aforesaid, and said charge of two dollars per car constituted the only charge and the only compensation for said last mentioned service.

H. R. McCULLOUGH.

Subscribed in my presence and sworn to before me, this 25th day of May, 1908.

[Notarial seal.] OVIDE LANGLOIS,
Notary Public, Cook County, Illinois.

46 STATE OF ILLINOIS,
County of Cook, ss:

M. M. Kirkman, being first duly sworn, on oath says that he is the comptroller of the Chicago & Northwestern Railway Company, and as such is familiar with the method in which the accounts of the said company are kept and have been kept for some years last past.

Affiant further says that the moneys received by said company under the terminal charge of $2.00 per car for the transportation of live stock beyond the yards of said company in Chicago to the Union Stock Yards in Chicago is not now and never was entered upon the books and accounts of the said company as receipts from freight for the transportation of live stock, but that on the contrary the same have been kept entirely separate upon the books of the said company from the accounts of the moneys received by said company for the transportation of live stock from the points of origin of the shipment to the tracks and yards of said company at Mayfair; that the moneys received for the transportation of live stock by said company from the points of origin of the shipments to the yards and tracks at Mayfair, in Chicago, have been kept in the accounts of said company as freight earnings, while the moneys received by said company under the terminal charge aforesaid of $2.00 per car for the transportation of such live stock beyond the tracks of said company in Chicago, and to the Union Stock Yards aforesaid, have been entered in the said

accounts as miscellaneous earnings or as switching earnings
47 upon the books of said company.

Affiant further says that attached to this affidavit, and marked "Exhibit A," is an original waybill issued in connection with a shipment of live stock, which live stock was transported to and delivered at the Union Stock Yards in Chicago by said company; and affiant says that the method of entering the freight charges for the transportation of the live stock from the point of origin of the shipment to the tracks and yards of said company at Mayfair, as one item and the entering of the terminal charge aforesaid as a separate item has been the uniform course and practice pursued in the business of said company for a number of years last past, and that the method of entering the said items and charges separately, as shown by said waybill marked "Exhibit A," is the method adopted generally in the business of said company, and the waybills of said company issued in connection with the transportation of live stock delivered at said Union Stock Yards are in this respect similar to the waybill attached hereto as "Exhibit A."

E. J. B. M. M. KIRKMAN.

Subscribed in my presence and sworn to before me, this 25th day of May, 1908.

[Notarial seal.] JOSEPH B. REDFIELD,
Notary Public, Cook County, Illinois.

(Endorsed:) Affidavits of Chicago & Northwestern Railway Co. Filed May 28th, 1908. Henry D. Lang, clerk.

* * * * * * *

49 Thereafter and on the same day the following affidavit of W. E. Keepers was filed in said cause, viz:

STATE OF ILLINOIS,
County of Cook, ss.

W. E. Keepers, being first duly sworn, on oath says that he is the general freight agent of the Illinois Central Railroad Company, one of the complainants herein.

Affiant further says that attached to this affidavit, marked "Exhibit A," is a copy of the tariff of said company duly filed, issued, and published according to law and now in force showing the charge for the transportation of live stock.

Affiant further says that the provisions of the said tariff showing that the rates therein named apply only to the transportation of live stock from the points named to the tracks and yards of the company in Chicago, and that the terminal charge of $2.00 per car was made solely for the transportation of such live stock beyond the tracks of said company and to the Union Stock Yards in Chicago, are the provisions which have been in tariffs issued for said company for a number of years last past and since the year 1904.

Affiant further says that the said tariff provisions are construed by the officials of said company to mean, and that the purpose and object

of inserting the said provisions in said tariff were, that it should mean that the charge laid in said tariff of $2.00 per car for the transportation and delivery of live stock beyond the tracks of said company and to the Union Stock Yards in Chicago, was separated and
50 segregated from the charge laid in said tariffs for the transportation of live stock from the points named therein to the yards of said company upon the tracks of said company in Chicago; and that the purpose and object of said provisions in said tariffs were that the charge therein laid for the transportation of live stock from the points therein named to the yards of said company upon the tracks of said company in Chicago was charged and collected solely and exclusively for the transportation of such live stock from the said points to the yards of said company upon the tracks of said company in Chicago; and that said charge of $2.00 per car laid in said tariffs for the transportation and delivery of live stock beyond the tracks of said company to the Union Stock Yards aforesaid was laid and collected solely and exclusively for the service of transporting such live stock beyond the tracks of said company, and delivering the same at the Union Stock Yards aforesaid: and said charge of $2.00 per car constitued the only charge and the only compensation for said last mentioned service.

W. E. KEEPERS.

Subscribed in my presence and sworn to before me this 25th day of May, 1908.

[Notarial seal.] ANDREW P. HUMBURG,
Notary Public, Cook County, Illinois.

* * * * * * *

59 Thereafter and on the same day the following affidavit of C. F. Krebs was filed in said cause, to wit:

STATE OF ILLINOIS,
County of Cook, ss.

C. F. Krebs, being first duly sworn, on oath says that he is the comptroller of the Illinois Central Railroad Company, one of the complainants herein, and as such is familiar with the method in which the accounts of said company are kept, and have been kept for some years last past.

Affiant further says that the moneys received by said company under the terminal charge of $2.00 per car for the transportation of live stock beyond the yards of said company upon the tracks of said company in Chicago, and to the Union Stock Yards in Chicago, is not now entered upon the books and accounts of the said company as receipts from freight for transportation of live stock; but, on the contrary, the same are kept entirely separated and segregated upon the books of said company from the accounts of the moneys received by said company for the transportation of live stock from points of origin of the shipment to the yards of said company upon the tracks of said company in Chicago; that the moneys received from the

transportation of live stock of said company from the points of origin of the shipment to the yards of said company upon said company's tracks in Chicago have been kept in the accounts of said company as freight earnings, and the moneys received by the said company under the terminal charge aforesaid of $2.00 per car for the transportation of such live stock beyond the tracks of said company in Chicago, and to the Union Stock Yards aforesaid, have been
60 entered in the accounts of said company in a separate account.

CON. F. KREBS.

Subscribed in my presence and sworn to before me this 25th day of May, 1908.

[Notarial seal.] ANDREW P. HUMBURG,
Notary Public, Cook County, Illinois.

61 STATE OF ILLINOIS,
County of Cook, ss.

C. F. Krebs, being first duly sworn, on oath says that he is the comptroller of the Illinois Central Railroad Company, one of the complainants herein, and as such is familiar with the method in which the accounts of said company are kept, and have been kept for more years last past.

Affiant further says that attached to this affidavit, and marked "Exhibit A," is an original waybill issued in connection with a shipment to and delivery at the Union Stock Yards in Chicago; and affiant further says that the rule and practice is, and for many years last past have been *been*, for said company to issue waybills in connection with the transportation of live stock delivered at the Union Stock Yards similar to the waybills marked "Exhibit A," in this, that they show, as does "Exhibit A," the separate entering thereon of the freight charge for the transportation of the said live stock and the terminal charge aforesaid.

CON. F. KREBS.

Subscribed in my presence and sworn to before me this 25th day of May, 1908.

[Notarial seal.] ANDREW P. HUMBURG,
Notary Public, Cook County, Illinois.

(Endorsed:) Affidavits of Illinois Central Railroad Company. Filed May 28th, 1908. Henry D. Lang, clerk.

* * * * * * *

63 Thereafter and on the same day the affidavits of C. G. Weaver and M. A. Patterson were duly filed in said cause, viz:

STATE OF ILLINOIS,
County of Cook, ss.

C. G. Weaver, being first duly sworn, on oath says that he is the auditor, freight traffic, of the Chicago, Rock Island & Pacific Railway Company, one of the complainants herein, and as such is familiar

with the method in which the accounts of said company are kept and have been kept for some years last past.

Affiant further says that attached to this affidavit and marked "Exhibit A" is an original waybill issued in connection with a shipment to and delivery at the Union Stock Yards of said company in Chicago; and affiant further says that the waybills issued by said company for many years last past, in connection with the transportation of live stock delivered at the Union Stock Yards, are similar to the waybill marked "Exhibit A" in this, that they show, as does "Exhibit A," the separate entering thereon of the freight charge for the transportation of the said live stock and the terminal charge aforesaid.

C. G. WEAVER.

Subscribed in my presence and sworn to before me this 25th day of May, 1908.

[Notarial seal.]

CHARLES T. SWARZ,
Notary Public, Cook County, Illinois.

* * * * * * *

65 STATE OF ILLINOIS,
County of Cook, ss.

M. A. Patterson, being first duly sworn, on oath says that he is the assistant general freight agent of the Chicago, Rock Island and Pacific Railway Company, one of the complainants herein.

Affiant further says that attached to this affidavit, marked "Exhibit A," is a copy of the tariff of said company, duly filed, issued, and published according to law and now in force, showing the charge for the transportation of live stock.

Affiant further says that the provisions of the said tariff showing that the rates therein named apply only to the transportation of live stock from the points named to the tracks and yards of the company in Chicago, and that the terminal charge of $2.00 per car was made solely for the transportation of such live stock beyond the tracks of the said company and to the Union Stock Yards in Chicago, are the provisions which have been in tariffs issued for said company for a number of years last past, and since the year 1904.

Affiant further says that the said tariff provisions are construed by the officials of said company to mean and that the purpose and object of inserting the said provisions in said tariff were that it should mean that the charge laid in said tariff of $2.00 per car for the transportation and delivery of live stock beyond the tracks of said company and to the Union Stock Yards in Chicago, was separated and segregated from the charge laid in said tariffs for the transportation of live stock from the points named therein, to the yards of said company upon the tracks of said company in Chicago; and that the purpose and object of said provisions in said tariffs were that the charge therein laid for the transportation of live stock from the points therein named to the yards of said company upon the tracks of said company in Chicago was charged and collected solely and ex-

66

clusively for the transportation of such live stock from the said points to the yards of said company upon the tracks of said company in Chicago, and that said charge of $2.00 per car laid in said tariffs for the transportation and delivery of live stock beyond the tracks of said company to the Union Stock Yards aforesaid was laid and collected solely and exclusively for the service of transporting such live stock beyond the tracks of said company, and delivering the same at the Union Stock Yards aforesaid; and said charge of $2.00 per car constituted the only charge and the only compensation for said last-mentioned service.

M. A. PATTERSON.

Subscribed in my presence and sworn to before me this 25th day of May, 1908.

[Notarial seal.] CHARLES T. SWARZ,
Notary Public, Cook County, Illinois.

(Endorsed:) Affidavits of Chicago, R. I. & P. Ry. Co. Filed May 28th, 1908. Henry D. Lang, clerk.

* * * * * * *

72 STATE OF ILLINOIS,
County of Cook, ss:

J. H. Hiland, being first duly sworn, on oath says that he is the 3rd vice-prest. of the Chicago, Milwaukee & St. Paul Railway Company, one of the complainants herein.

Affiant further says that attached to this affidavit, market "Exhibit A," is a copy of the tariff of said company duly filed, issued, and published according to law and now in force showing the charge for transportation of live stock.

Affiant further says that the provisions of the said tariff showing that the rates therein named apply only to the transportation of live stock from the points named to the tracks and yards of the company in Chicago, and that the terminal charge of $2.00 per car was made solely for the transportation of such live stock beyond the tracks of said company and to the Union Stock Yards in Chicago are the provisions which have been in tariffs issued for said company for a number of years last past, and since the year 1904.

Affiant further says that the said tariff provisions are construed by the officials of said company to mean, and that the purpose and object of inserting the said provisions in said tariff were that it should mean, that the charge laid in said tariff of $2.00 per car for the transportation and delivery of live stock beyond the tracks of

73 said company and to the Union Stock Yards in Chicago was separated and segregated from the charge laid in said tariffs for the transportation of live stock from the points named therein to the yards of said company upon the tracks of said company in Chicago; and that the purpose and object of said provisions in said tariffs were that the charge therein laid for the transportation of live stock from the points therein named to the yards of said com-

pany upon the tracks of said company in Chicago was charged and collected solely and exclusively for the transportation of such live stock from the said points to the yards of said company upon the tracks of said company in Chicago; and that said charge of $2.00 per car laid in the said tariffs for the transportation and delivery of live stock beyond the tracks of said company to the Union Stock Yards aforesaid was laid and collected solely and exclusively for the service of transportating such live stock beyond the tracks of said company and delivering the same at the Union Stock Yards aforesaid, and said charge of $2.00 per car constituted the only charge and the only compensation for said last-mentioned service.

J. H. HILAND.

Subscribed in my presence and sworn to before me this 25th day of May, 1908.

[Notarial seal.] W. D. MILLARD,
Notary Public, Cook County, Illinois.

(Endorsed:) Affidavit of Chicago, Milwaukee & St. Paul Railway Co. Filed May 28th, 1908. Henry D. Lang, clerk.

* * * * * * *

111 Thereafter and on the same day the following affidavit of J. R. Brice was filed of record in said cause, viz:

STATE OF ILLINOIS,
County of Cook, ss:

J. R. Brice, being first duly sworn, on oath says that he is the freight auditor of the Chicago, Milwaukee & St. Paul Ry. Co., one of the complainants herein, and as such is familiar with the method in which the accounts of said company are kept and have been kept for some years last past.

Affiant further says that attached to this affidavit, and marked "Exhibit A," is an original waybill issued in connection with a shipment to and delivery at the Union Stock Yards of said company, in Chicago; and affiant further says that the waybills issued by said company for many years last past in connection with the transportation of live stock delivered at the Union Stock Yards are similar to the waybill marked "Exhibit A" in this, that they show, as does "Exhibit A," the separate entering thereon of the freight charge for the transportation of the said live stock and the terminal charge aforesaid.

J. R. BRICE.

Subscribed in my presence and sworn to before me this 26th day of May, 1908.

[Notarial seal.] F. M. SMITH,
Notary Public, Cook County, Illinois.

(Endorsed:) Affidavit of Chicago, Milwaukee & St. Paul Railway Company. Filed May 28th, 1908. Henry D. Lang, clerk.

* * * * * * *

113 Thereafter and on the same day the following affidavit of Walter L. Ross was filed in said cause, viz:

STATE OF ILLINOIS,
County of Cook, ss.

Walter L. Ross, being duly sworn, on oath deposes and says that he is the general traffic manager of the Chicago and Alton Railroad Company, one of the complainants herein.

Affiant further says that attached to this affidavit, marked "Exhibit A," is a copy of the tariff of said company duly filed, issued and published according to law and now in force, showing the charge for the transportation of live stock.

Affiant further says that the provisions of the said tariff showing that the rates therein named apply only to the transportation of live stock from the points named to the tracks and yards of the company in Chicago, and that the terminal charge of $2.00 per car was made solely for the transportation of such live stock beyond the tracks of said company and to the Union Stock Yards in Chicago are the provisions which have been in tariffs issued for said company for a number of years last past, and since the year 1904.

Affiant further says that the said tariff provisions are construed by the officials of said company to mean and that the purpose and object of inserting the said provision in said tariff were that it should mean that the charge laid in said tariff of $2.00 per car for the transportation and delivery of live stock beyond the tracks of said company and to the Union Stock Yards in Chicago, was separated
114 and *ae*gregated from the charge laid in said tariffs for the transportation of live stock from the points named therein to the yards of said company upon the tracks of said company in Chicago; and that the purpose and object of said provisions in said tariffs were that the charge therein laid for the transportation of live stock from the points therein named to the yards of said company upon the tracks of said company in Chicago was charged and collected solely and exclusively for the transportation of such live stock from the said points to the yards of said company upon the tracks of said company in Chicago; and that said charge of $2.00 per car laid in said tariffs for the transportation and delivery of live stock beyond the tracks of said company to the Union Stock Yards aforesaid was laid and collected solely and exclusively for the service of transporting such live stock beyond the tracks of said company, and delivering the same at the Union Stock Yards aforesaid; and said charge of $2.00 per car constituted the only charge and the only compensation for said last mentioned service.

WALTER L. ROSS.

Subscribed in my presence and sworn to before me this 27 day of May, 1908.

[Notarial seal.] ROBT. J. BELL,
Notary Public, Cook County, Illinois.

(Endorsed:) Affidavit of Chicago & Alton Railroad Company. Filed May 28th, 1908. Henry D. Lang, clerk.

* * * * * * *

121 STATE OF ILLINOIS,
County of Cook, ss.

W. D. Tucker, being first duly sworn, on oath says that he is the general auditor of the Chicago & Alton Railroad Company, one of the complainants herein, and as such is familiar with the method in which the accounts of said company are kept, and have been kept for some years last past.

Affiant further says that attached to this affidavit, and marked "Exhibit A," is an original waybill issued in connection with a shipment to and delivery at the Union Stock Yards of said company in Chicago; and affiant further says that the waybills issued by said company for many years last past in connection with the transportation of live stock delivered at the Union Stock Yards, are similar to the waybill marked "Exhibit A" in this, that they show, as does "Exhibit A," the separate entering thereon of the freight charge for the transportation of the said live stock and the terminal charge aforesaid.

W. D. TUCKER.

Subscribed in my presence and sworn to before me, this 27 day of May, 1908.

[Notarial seal.] ROBT J. BELL,
Notary Public, Cook County, Illinois.

(Endorsed:) Affidavit of Chicago & Alton Railroad Company. Filed May 28th, 1908. Henry D. Lang, clerk.

* * * * * * *

123 STATE OF ILLINOIS,
County of Cook, ss:

C. I. Sturgis, being first duly sworn, on oath says that he is the general auditor of the Chicago, Burlington and Quincy Railroad Company, one of the complainants herein, and as such is familiar with the method in which the accounts of said company are kept, and have been kept for some years last past.

Affiant further says that the moneys received by said company under the terminal charge of $2.00 per car for the transportation of live stock beyond the yards of said company upon the tracks of said company in Chicago, and to the Union Stock Yards in Chicago, is not now and has not for many years been entered upon the books and accounts of the said company as receipts from freight for the transportation of live stock, but, on the contrary, the same have been kept entirely separated and segregated upon the books of said company from the accounts of the moneys received by said company for the transportation of live stock from points of origin of the shipment to the yards of said company upon the tracks of said company in Chicago; that the moneys received for the transportation of live

stock of said company from the points of origin of the shipment to the yards of said company upon said company's tracks in Chicago have been kept in the accounts of said company as freight earnings, and the moneys received by said company under the terminal
124 charge aforesaid of $2.00 per car for the transportation of such live stock beyond the tracks of said company in Chicago, and to the Union Stock Yards aforesaid, have been entered in the accounts of said company as miscellaneous earnings or as switching earnings.

Affiant further says that attached to this affidavit and marked "Exhibit A" is an original waybill issued in connection with a shipment to and delivery at the Union Stock Yards of said company, in Chicago; and affiant further says that the waybills issued by said company for many years last past, in connection with the transportation of live stock delivered at the Union Stock Yards, are similar to the waybill marked "Exhibit A," in this: That they show, as does "Exhibit A," the separate entering thereon of the freight charge for the transportation of the said live stock and the terminal charge aforesaid.

C. I. STURGIS.

Subscribed in my presence and sworn to before me this 25th day of May, 1908.

J. H. PETTIBONE,
Notary Public, Cook County, Illinois.

* * * * * * *

126 STATE OF ILLINOIS,
County of Cook, ss:

George H. Crosby, being first duly sworn, on oath says that he is the freight traffic manager of the Chicago, Burlington & Quincy Railroad Company, one of the complainants herein.

Affiant further says that attached to this affidavit, marked "Exhibit B," is a copy of the tariff of said company duly filed, issued, and published according to law, and now in force, showing the charge for the transportation of live stock.

Affiant further says that the provisions of the said tariff showing that the rates therein named apply only to the transportation of live stock from the points named to the tracks and yards of the company in Chicago, and that the terminal charge of $2.00 per car was made solely for the transportation of such live stock beyond the tracks of said company and to the Union Stock Yards in Chicago, are the provisions which have been in tariffs issued for said company for a number of years last past, and since the year 1904.

Affiant further says that the said tariff provisions are construed by the officials of said company to mean and that the purpose and object of inserting the said provisions in said tariff were that it should mean that the charge laid in said tariff of $2.00 per car for the transportation and delivery of live stock beyond the tracks of said company and to the Union Stock Yards in Chicago was sepa-
127 rated and segregated from the charge laid in said tariffs for the

transportation of live stock from the points named therein to the yards of said company upon the tracks of said company in Chicago; and that the purpose and object of said provisions in said tariffs were that the charge therein laid for the transportation of live stock from the points therein named to the yards of said company upon the tracks of said company in Chicago was charged and collected solely and exclusively for the transportation of such live stock from the said points to the yards of said company upon the tracks of said company in Chicago; and that said charge of $2.00 per car laid in said tariffs for the transportation and delivery of live stock beyond the tracks of said company to the Union Stock Yards aforesaid was laid and collected solely and exclusively for the service of transporting such live stock beyond the tracks of said company and delivering the same at the Union Stock Yards aforesaid, and said charge of $2.00 per car constituted the only charge and the only compensation for said last mentioned service.

GEORGE H. CROSBY.

Subscribed in my presence and sworn to before me this 25th day of May, 1908.

[Notarial seal.] J. H. PETTIBONE,
Notary Public, Cook County, Illinois.

(Endorsed:) Affidavits of Chicago, Burlington & Quincy Rd. Co. Filed May 28th, 1908. Henry D. Lang, clerk.

* * * * * * *

204 Thereafter and on the same day the following affidavits of W. E. Bailey, C. B. Strohm, and J. E. Gorman were filed of record in said cause, viz:

STATE OF ILLINOIS,
County of Cook, ss:

W. E. Bailey, being first duly sworn, on oath says that he is the general auditor of the Atchison, Topeka and Santa Fe Railway Company, one of the complainants herein, and as such is familiar with the method in which the accounts of said company are kept and have been kept for some years last past.

Affiant further says that the moneys received by said company under the terminal charge of $2.00 per car for the transportation of live stock beyond the yards of said company upon the tracks of said company in Chicago, and to the Union Stock Yards in Chicago, is not now and has not for many years been entered upon the books and accounts of the said company as receipts from freight for the transportation of live stock, but, on the contrary, the same have been kept entirely separated and segregated upon the books of said company from the accounts of the moneys received by said company for the transportation of live stock from points of origin of the shipment to the yards of said company upon the tracks of said company in Chicago; that the moneys received for the transportation of live

stock of said company from the points of origin of the shipment to the yards of said company upon said company's tracks in Chicago have been kept in the accounts of said company as freight earnings, and the moneys received by said company under the terminal
205 charge aforesaid of $2.00 per car for the transportation of such live stock beyond the tracks of said company in Chicago, and to the Union Stock Yards aforesaid, have been entered in the accounts of said company as miscellaneous earnings or as switching earnings.

Affiant further says that attached to this affidavit, and marked "Exhibit A," is an original waybill issued in connection with a shipment to and delivery at the Union Stock Yards of said company in Chicago; and affiant further says that the waybills issued by said company for many years last past in connection with the transportation of live stock delivered at the Union Stock Yards are similar to the waybill marked "Exhibit A" in this, that they show, as does "Exhibit A," the separate entering thereon of the freight charge for the transportation of the said live stock and the terminal charge aforesaid.

W. E. BAILEY.

Subscribed in my presence and sworn to before me this 25th day of May, 1908.

[Notarial seal.] J. L. COLEMAN,
Notary Public, Cook County, Illinois.

* * * * * * *

207 STATE OF ILLINOIS,
County of Cook, ss.

C. B. Strohm, being first duly sworn, on oath says that he is the agent and superintendent of terminals of the Atchison, Topeka and Santa Fe Railway Company, one of the complainants herein, and as such is familiar with the method in which the accounts of said company are kept, and have been kept for some years last past.

Affiant further says that attached to this affidavit, and marked "Exhibit A," is an exact copy of an original waybill issued in connection with a shipment to and delivery at the Union Stock Yards of said company in Chicago; and affiant further says that the waybills issued by said company for many years last past in connection with the transportation of live stock delivered at the Union Stock Yards, are similar to the waybill marked "Exhibit A," in this, that they show as does "Exhibit A," the separate entering thereon of the freight charge for the transportation of the said live stock and the terminal charge aforesaid.

C. B. STROHM.

Subscribed in my presence and sworn to before me this 25th day of May, 1908.

[Notarial seal.] J. L. COLEMAN,
Notary Public, Cook County, Illinois.

* * * * * * *

209 STATE OF ILLINOIS,
County of Cook, ss.

J. E. Gorman, being first duly sworn, on oath says that he is the freight traffic manager of the Atchison, Topeka and Santa Fe Railway Company, one of the complainants herein.

Affiant further says that attached to this affidavit, marked "Exhibit A," is a copy of the tariff of said company duly filed, issued, and published according to law and now in force, showing the charge for the transportation of live stock.

Affiant further says that the provisions of the said tariff, showing that the rates therein named apply only to the transportation of live stock from the points named to the tracks and yards of the company in Chicago, and that the terminal charge of $2.00 per car was made solely for the transportation of such live stock beyond the tracks of said company and to the Union Stock Yards in Chicago, are the provisions which have been in tariffs issued for said company for a number of years last past.

Affiant further says that the said tariff provisions are construed by the officials of said company to mean and that the purpose and object of inserting the said provisions in said tariff were that it should mean that the charge laid in said tariff of $2.00 per car for the transportation and delivery of live stock beyond the tracks of said company and to the Union Stock Yards in Chicago, was separated and segre-
210 gated from the charge laid in said tariffs for the transportation of live stock from the points named therein, to the yards of said company upon the tracks of said company in Chicago; and that the purpose and object of said provisions in said tariffs were that the charge therein laid for the transportation of live stock from the points therein named to the yards of said company upon the tracks of said company in Chicago was charged and collected solely and exclusively for the transportation of such live stock from the said points to the yards of said company upon the tracks of said company in Chicago; and that said charge of $2.00 per car laid in said tariffs for the transportation and delivery of live stock beyond the tracks of said company to the Union Stock Yards aforesaid was laid and collected solely and exclusively for the service of transporting such live stock beyond the tracks of said company and delivering the same at the Union Stock Yards aforesaid, and said charge of $2.00 per car constituted the only charge and the only compensation for said last-mentioned service.

J. E. GORMAN.

Subscribed in my presence and sworn to before me this 25th day of May, 1908.

[Notarial seal.] J. L. COLEMAN,
Notary Public, Cook County, Ill.

(Endorsed:) Affidavits of Atchison, Topeka and Santa Fe. Rd. Co. Filed May 28th, 1908. Henry D. Lang, clerk.

* * * * * * *

343 Thereafter and on the same day the following answer was filed of record in said cause, to-wit:

In the Circuit Court of the United States within and for the District of Minnesota.

ALPHEUS B. STICKNEY AND CHARLES H. F. SMITH, receivers of the Chicago Great Western Railway Company; Chicago Great Western Railway Company; Chicago, Burlington and Quincy Railroad Company; The Illinois Central Railroad Company; Chicago and Northwestern Railway Company; Chicago, Milwaukee and St. Paul Railway Company; the Chicago and Alton Railroad Company; The Chicago, Rock Island and Pacific Railway Company; and The Atchison, Topeka and Santa Fe Railway Company, complainants,

v.

THE INTERSTATE COMMERCE COMMISSION, defendant.

The answer of the Interstate Commerce Commission, the defendant herein, to the bill of complaint of the above-named complainants.

This defendant, the Interstate Commerce Commission, now and at all times hereafter saving to itself all and all manner of benefit or advantage of exception or otherwise that can or may be had
344 or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for it to make answer, answering saith:

I.

That this defendant is a bureau or department of the Government of the United States which was created and established and now exists under and by virtue of an act of the Congress of the United States entitled "An act to regulate commerce," approved February 4, 1887, as amended by subsequent acts, and particularly as amended by the act of June 29, 1906, and that the complainants are common carriers engaged in the interstate transportation of passengers and property wholly by railroad or partly by railroad and partly by water, and as such common carriers and in respect to such transportation are subject to the provisions of said act entitled "An act to regulate commerce," and said acts amendatory thereof and supplementary thereto.

II.

That by section 12 of said act this defendant is given authority to inquire into the management of the business of all common carriers subject to the provisions of the act, and is required to keep itself informed as to the manner and method in which the same is conducted, and is "authorized and required to execute and enforce the provisions of the act;" and that among the provisions of the
345 act which this defendant is authorized and required to execute and enforce is the provision of section 1 thereof, requiring "all charges made for any services rendered or to be rendered in the transportation of passengers or property or in connection therewith to be just and reasonable," and forbidding every unjust and unreasonable charge for such service or any part thereof; and, also, the provisions of section 3 thereof, which declares that "it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

III.

That by section 13 of said act it is provided that, among others, any person, firm, corporation, or association may make complaint to this defendant by petition, briefly stating the facts, "of anything done or omitted to be done by any common carrier subject to the provisions of the act in contravention of the provisions thereof;" that a "statement of the charges thus made shall be forwarded" by this defendant "to such common carrier, who shall be called upon to satisfy the complaint or to answer the same in writing within a
346 reasonable time, to be specified" by this defendant; that if such common carrier "shall not satisfy the claim, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty" of this defendant "to investigate the matters complained of in such manner and by such means as it shall deem proper;" and by section 14 it is provided that whenever an investigation shall be thus made by this defendant "it shall be its duty to make a report in writing in respect thereto, which shall state the conclusions of" this defendant, "together with its decision, order, or requirement in the premises."

IV.

That on December 3, 1906, in pursuance of and in strict conformity to the provisions of the law set forth in the preceding paragraph of this answer, the Cattle Raisers' Association of Texas and the Chicago Live Stock Exchange made complaint to this defendant against the

railway companies, complainants herein, alleging violation of provisions of said act to regulate commerce, as hereinafter specifically set forth, and this defendant, after said complaint had been fully presented to it, both in the way of testimony and argument in behalf of both parties, and, after having investigated and considered the facts and questions presented, made a report in writing in respect thereto, setting forth in said report the material facts as found by this defendant from the testimony before it and the conclusion of this defendant therefrom, together with its order in question in
347 this case. (A copy of said report and order is hereto attached as Exhibit A, and a copy of the report of this defendant in another proceeding involving the same subject-matter between substantially the same parties is attached as Exhibit B hereto, and both are made parts hereof.)

V.

That prior to the year 1865 live stock was marketed in Chicago at several different points, and competition required the various railway companies bringing live stock to that market to deliver it, according to the wish of the shipper, at any one of these several points; that this involved expense and trouble, inasmuch as deliveries had often to be made at points off the lines of the various railways, and for the purpose of avoiding this a corporation, known as the Union Stock Yards and Transit Company, was organized by the railways, who took most of the stock and assumed the management of the corporation; that this company constructed the Union Stock Yards, consisting of chutes, pens, and the various appliances necessary for the unloading and marketing of live stock, and also built railroad tracks necessary to connect the various lines of railway engaged in the business with the Union Stock Yards, and entered into an arrangement with these railways by which they were to operate their own trains over the tracks of the Stock Yards Company to the stock yards without payment of other compensation than an unloading charge of 25
348 cents per car; that live stock thereafter shipped to Chicago was delivered at the Union Stock Yards as a matter of course, unless some other delivery for some special purpose or peculiar reason was directed, and the published rate to Chicago carried with it in all cases delivery at the stock yards; that this continued to be the case from 1865 up to June, 1894, when the Stock Yards Company imposed a charge for the use of its tracks leading from the terminals of the complainants to the stock yards, and said trackage charge so imposed ranged from 80 cents per car in some cases to $1.50 in others, the 80 cents charge being applied to most of the railways and the average charge being about $1 per car; and that for the alleged excuse afforded by the imposition of this average trackage charge of $1 the railway companies, June 1, 1894, exacted from the shippers $2 per car in addition to the through rates in force.

VI.

That the complaint made to the commission by the Cattle Raisers' Association of Texas and the Chicago Live Stock Exchange was based upon this additional charge of $2 and alleged that it resulted in making the entire through rate, which theretofore had embraced delivery at the stock yards, unjust and unreasonable, and this defendant found, as appears from its report (Exhibit A hereto), that the $2 additional charge was unjust and unreasonable, in so far as that charge exceeded the sum which the carriers were actually
349 obliged to pay in consequence of the trackage charge imposed by the Stock Yards Company, and that, the average sum which the complainants were obliged to pay for trackage being $1, that sum might be added without causing the existing rate to become unreasonable, and the order of this defendant (Exhibit A hereto) is in pursuance of this finding.

VII.

That this defendant prior to the issuance of the order in question in this case had, after due investigation as required by the law, made an order to the same effect in another proceeding involving the same questions and subject-matter, and the railway companies having refused to comply with said last-mentioned order, this defendant filed a petition in the Circuit Court of the United States for the Northern District of Illinois to compel compliance; that said Circuit Court refused to enforce the order and entered a decree dismissing said petition, and on appeal by this defendant to the Supreme Court that court affirmed the action of the court below (I. C. C. *v.* C., B. & Q. R. R. Co., 186 U. S., 320), on the ground that it appeared that since the charge of $2 was imposed the rates from a portion of the territory to which said last-named order of this defendant was applicable had been reduced and as so reduced were made less than they had been prior to the exaction of the $2 additional charge, and that, as this defendant did not designate or definitely define this territory from which the rates had been so reduced and its order was general,
350 operating upon all the cariers in the whole territory covered by the complaint, it could not be enforced as to any of said territory; that in affirming the action of the lower courts in dismissing defendant's petition the Supreme Court says:

"We think, however, * * * that nothing in the decree refusing to execute the order of the commission should be construed as preventing that body, if it deems it best to do so, from hereafter commencing proceedings to correct any unreasonableness in the rate resulting from the additional terminal charge as to any territory to which the reduction referred to in the opinion, if any such there be, did not apply. (186 U. S., 342.)"

That under the leave thus granted, the said complaint of the Cattle Raisers' Association of Texas and the Chicago Live Stock Exchange, which resulted in the order in question in the present case,

was filed before this defendant and this defendant in its report and opinion (Exhibit A hereto), upon which said order is based, meets the view of the Supreme Court by designating the territory to which the reduction in rates applied.

VIII.

That while the Supreme Court on the ground set forth in the preceding paragraph of this answer refused to reverse the action of the courts below and decree the enforcement of the order of the commission, it sustained the commission on all the material grounds
351 upon which the commission based said order; that the commission held that the fact that the complainants from 1865 to 1894, a period of twenty-nine years, transported the stock to the stock yards without any additional charge for continuing the transportation from their own terminals over the tracks of the Stock Yards Company to the stock yards, justified the presumption that the through rate was intended to cover and did cover this extra expense, and the Supreme Court sustains this finding of the commission, saying:

"There is no room for question that during the many years these rate sheets were enforced, the carriers, under their contracts to carry to Chicago, delivered carloads of cattle to the stock yards without making any charge other than that which was specified in the through rate. Under these circumstances, in the absence of proof, can it be assumed that the carriers were, for the many years in question, gratuitously performing the terminal service? That such assumption may not be indulged in results from the ruling in Covington Stock Yards *v.* Keith, 139 U. S., 128, where it was decided that as for a through rate to a given point the carrier contracted to deliver at that point, the presumption was that the through rate included adequate compensation for the services rendered at the point of delivery. (186 U. S. 336.)"

That said court further sustained this defendant in its finding that the exaction by the Stock Yards Company of a trackage
352 charge averaging $1 did not justify the exaction by the complainant railway companies of $2 therefor, saying:

"It needs no reasoning to demonstrate that the commission correctly held that the mere imposition by the Stock Yards Company of a new burden averaging $1 per car did not justify an additional charge by the carriers of $2 per car. (186 U. S., bottom p. 337, top p. 338.)"

That said court also sustained the finding of this defendant that the through rate to the terminals at Chicago on the lines of complainants charged prior to 1894 included compensation for the service rendered in transporting the stock from said terminals to the stock yards and that the charge of $2 was in addition to the through rate which had theretofore been charged, saying:

"The entire previous through rate was maintained and a memorandum was placed upon the schedules to the effect that thereafter an additional charge of $2 for delivering at the stock yards would

be exacted. This was a mere addition to the sum of the terminal charge embraced in the prior through rate. We think that it can not be said that to add an additional amount to the former charge was necessary to divide such former charge without holding that to add one sum to another is necessary to divide the other. (186 U. S., top p. 337.)"

353 IX.

Defendant denies the allegation in the bill of complaint that "said charge of $2 per car was the sole and only charge and compensation made or received by complainants for the service of transporting the said cars of live stock beyond the lines of their respective roads and making delivery of the same in the said Union Stock Yards; and that said charge of $2 per car for said service was segregrated from and entirely separate from the charge in the tariffs for the transportation of said live stock from the point of origin of the shipment to a delivery point on the tracks of the complainants in the city of Chicago," and defendant alleges that as found by the Supreme Court the said charge of $2 was a "mere addition to the sum of the terminal charge embraced in the prior through rate;" that the through rate enforced from 1865 to 1894 covered compensation for the entire service from the point of origin of the live stock shipments to the stock yards; that delivery at the stocy yards was a necessary incident of the contract to carry live stock to Chicago; that the allegation of complainants that the $2 charge is not adequate to cover the cost for the terminal service rendered in making delivery at the stock yards is, if true, a circumstance showing that it was not imposed for that purpose and that the through rate was intended to cover and does cover that expense; that in the language of this defendant in its report (Exhibit A hereto), "segregation is one thing and addition is another, and what the complainants did was to make an arbitrary addition
354 to the previous rate, by charging $2 per car more for bringing exactly the same freight and performing exactly the same service as before;" that complainants can not by setting forth in their tariffs a statement that said $2 charge was for the "special and separate service" of transporting the live stock from their respective roads to the stock yards alter the fact as herein alleged and as found by the Supreme Court and this defendant; and defendant denies all the allegations in said bill of complaint inconsistent or in conflict with the foregoing allegations in this Paragraph IX of this answer.

X.

Defendant denies that the complainants have adequate, if any, terminal facilities for live stock in Chicago, to which live stock is shipped upon the rates from points of origin to Chicago; and alleges that, as found by this defendant in its report (Exhibit A hereto), some of the complainants, about June 1, 1894, the date of the imposition of the $2 charge, "provided in a very limited way such facilities

at various points in and around Chicago, but that in no case were these facilities adequate to the handling of any considerable number of animals; that the complainants perfectly understood that shippers could not avail themselves of these facilities, and the only purpose in providing them was to give color to the claim that they had in the vicinity of Chicago some live-stock depots other than the Union Stock Yards;" that the rate in force June 1, 1894, was sufficiently high to include delivery at the stock yards, if no trackage charge had been imposed by the Stock Yards Company; that there has been no increase in the expense of the service from the terminals of the complainants to the stock yards, except by reason of the imposition of the trackage charge, and that the total cost to the complainants of delivering live stock at the Union Stock Yards, including the trackage charge, is not much, if any, above one-half the average cost of handling all carload freight in the city of Chicago.

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XI.

That cattle from much of the territory involved in this case can be marketed at several different points, like Chicago, St. Louis, Kansas City, and Omaha, and the rate is an important factor in determining to which of these markets they shall be sent; that for many years previous to 1894 a certain relation in rates had been maintained between these markets, and if any change was made to one market a corresponding change was ordinarily made to all others; that when the $2 charge involved in this case was imposed at Chicago no similar charge was made elsewhere, and the cost of transporting live stock to Chicago was increased by that amount while not so increased to these other competitive markets, and that this was and is an undue preference of said other markets and an unjust discrimination against Chicago, subjecting that city to an undue prejudice or disadvantage.

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XII.

That the charge of $2 involved in this case was the result of a contract or combination between complainants, and that said contract or combination was in restraint of trade or commerce within the meaning of the act of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," popularly known as the "Sherman anti-trust law," and was unlawful under said act; and that the complainants, for this and other reasons, do not come before this court clean handed, and their bill of complaint should be dismissed.

XIII.

That this defendant, by reason of the experience of its members in this kind of controversy and their great opportunity for full in-

formation, is, as to questions arising under the commerce acts, held by the courts to be an expert tribunal; that this defendant is also a quasi-judicial tribunal, and its conclusions in this case, and in all cases under said acts, are not the result of ex parte proceedings or investigations, but are the result of investigations strictly judicial; and that the conclusions of this defendant so arrived at are to be held to be prima facie correct, and should not be set aside by the courts except in a clear case of error.

XIV.

That the burden is upon the complainants to show clearly to the satisfaction of this court that the order of the commission in
357 question is erroneous and should not be enforced, and it is not sufficient to raise a mere doubt in the mind of the court; that the bill of complaint in this case does not set forth, or in any way make a part thereof, the report and opinion of this defendant or the evidence introduced on the hearing before this defendant, and upon which the conclusions and order of this defendant are based, and does not allege or show that said order is not justified by the weight of said evidence, and that there is no allegation in the bill of complaint herein that the complainants have discovered or are prepared to adduce any new testimony or testimony in addition to that adduced before this defendant.

XV.

That the order of the commission in question allows the complainants $1 in addition to what they had charged for the 29 years preceding the imposition of the $2 charge imposed June 1, 1894; that said allowance of $1 covers the average trackage charge made by the Stock Yards Company, and the charge of $2 renders the through rate excessive and unduly discriminatory; that no irreparable or material injury can result from the enforcement of said order, and that the rule is well settled by the courts that "an injunction should never be granted except in a clear case of irreparable injury and with a full conviction on the part of the court of its urgent necessity." (High, Vol. I, 36.)

358 XVI.

This defendant denies all the material allegations of said bill of complaint inconsistent with the allegations set forth in the foregoing paragraphs of this answer from Paragraph I to Paragraph XIII thereof, both inclusive, and now, having fully answered the said bill of complaint in so far as it is advised the same is material and necessary to be answered, denies that the complainants herein are entitled to the relief, or any part thereof, in said bill of complaint demanded, or any relief whatsoever; claims the same advantage of this, its answer thereto, as if it had demurred to said bill of com-

plaint, and prays to be hence dismissed with its reasonable charges in this behalf wrongfully sustained.

THE INTERSTATE COMMERCE COMMISSION,
By EDW. A. MOSELEY,
Secretary thereof, thereunto duly authorized.

WASHINGTON,
District of Columbia, ss:

Edw. A. Moseley, being first duly sworn, says on oath that he knows the contents of the foregoing answer, and that the facts stated therein are true to the best of his knowledge, information, and belief.

[Interstate Commerce Commission seal.] EDW. A. MOSELEY,

Subscribed and sworn to before me this the 23rd day of May, A. D. 1908.

[Notarial seal.] H. S. MILSTEAD,
Notary Public.

359 EXHIBIT A.

360 THE CATTLE RAISERS' ASSOCIATION OF TEXAS AND the Chicago Live Stock Exchange
v.
CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY; Chicago Great Western Railway Company; Chicago & Northwestern Railway Company; Chicago, Milwaukee & St. Paul Railway Company; Chicago & Alton Railroad Company; Chicago, Rock Island & Pacific Railway Company; Atchison, Topeka & Santa Fe Railway Company; and Illinois Central Railroad Company. } No. 939.

Submitted June 26, 1907. Decided October 21, 1907.

Upon the facts and circumstances disclosed by the record, Held, that the terminal charge of $2 per car exacted by defendants for the delivery of live stock at the Union Stock Yards in Chicago with respect to shipments from points without the State of Illinois is unjust and unreasonable and unduly discriminatory, and that such charge should not exceed $1 per car.

Held, further, that the decree of a court dismissing a bill brought to enforce an order of the commission made previous to the amendment of June 29, 1906, is not a bar to the right of the commission to examine with respect to a date subsequent to June 29 the same rate involved in that proceeding.

Cowan and Burney for the Cattle Raisers' Association of Texas.
S. H. Cowan for the Chicago Live Stock Exchange.
Ed. Baxter for defendants.

REPORT AND ORDER OF THE COMMISSION.

PROUTY, Commissioner:

The subject of this complaint is the so-called terminal charge of $2 per car imposed by the defendants for the delivery of carloads of live stock at the Union Stock Yards in Chicago. This matter has been before the commission in one form and another for the last ten years. Much testimony has been taken, much discussion
361 had, and four reports prepared. These reports treat the subject in every detail, and it would not be profitable, nor is it needful, to repeat those details here. A brief statement of the case is necessary to an understanding of the question to be decided.

Previously to about 1865 live stock was marketed in Chicago at several different points, and competition required the various railway companies bringing live stock to that market to deliver it, according to the wish of the shipper, at any one of these several points. This was expensive and annoying, since deliveries must often be made at points off the lines of the various railways, and for the purpose of avoiding it the following arrangement was adopted:

A corporation known as the Union Stock Yards & Transit Company was organized by the railways, who took most of the stock and assumed the management of the corporation. This company constructed the Union Stock Yards, consisting of chutes, pens, and the various appliances necessary for the unloading and marketing of live stock. The Union Stock Yards & Transit Company also built the railroad tracks necessary to connect the various lines of railway which then reached Chicago with the Union Stock Yards, and entered into an arrangement with these railways by which they were to operate their own trains over the tracks of the Stock Yards Company to the stock yards without the payment of other compensation than an unloading charge of 25 cents per car. While this was the understanding, there was no contract for a definite term to that effect.

The purpose of this was to establish a single market for the sale and delivery of live stock in the city of Chicago, and the result was exactly as desired. The other markets were all abandoned; slaughterhouses were located in the vicinity of these stock yards, and the Union Stock Yards thus became the sole place in the city of Chicago where cattle and hogs were marketed for slaughter. It was also the principal market for horses and mules. Live stock shipped to Chicago was delivered at the Union Stock Yards as a matter of course, unless some other delivery for some special purpose or peculiar reason was directed. One of the defendants for certain local reasons had unloading chutes and pens of limited capacity in another part of the city where stock for through shipment could be fed and watered; but aside from this the defendants had no facilities of their own worth the name in the city of Chicago. The published rate to Chicago carried with it in all cases delivery at the Union Stock Yards.

As time went on, the different railroad companies which had at first owned a controlling interest in the Union Stock Yards and Transit

Company parted with their stock holdings, so that, in the year 1894, while a majority of the directors of that company were
362 still representatives of various railway interests, the control of the company had entirely passed from their hands. In the spring of that year the Stock Yards Company announced its intention of imposing a charge for the use of its tracks leading to the stock yards. This purpose was earnestly resisted by the railways without avail, and a charge of 80 cents in some cases and $1.50 in other per car was exacted for the use of the tracks leading to the stock yards.

When the railways became convinced that they must pay this trackage imposition they in turn imposed upon the shipper a charge of $2 per car for delivering carloads of live stock at the Union Stock Yards. The tariffs fixing this charge were duly filed and posted and the charge itself became effective on June 1, 1894.

Agents at receiving points previous to this time had sent stock to the stock yards when consigned to Chicago without further direction. They now inquired of the shipper whether he desired his stock shipped to Chicago or to the Union Stock Yards. Since there was but one stock market in Chicago, and since the only practicable way of reaching that stock market was by transfer of the stock in the car to the stock yards, the shipper must of necessity elect to have the shipment delivered at the Union Stock Yards, and thereupon this additional charge of $2 was imposed.

Previous to June 1, 1894, none of the defendants, with one exception, had unloading facilities which would accommodate any considerable quantity of stock in the city of Chicago. Some of them about this time provided in a very limited way such facilities at various points in and around Chicago, but in no case were these facilities adequate to the handling of any considerable number of animals. The railways perfectly understood that shippers could not avail themselves of these facilities, and the only purpose in providing them was to give color to claim that they had in the vicinity of Chicago some live stock depot other than the Union Stock Yards. Several of the defendants did not even make this pretense.

It will be noticed that every incident of the transportation was precisely the same after June 1, 1894, as it had been before that date. The stock was received, transported, and delivered in exactly the same manner. The cost to the railway was exactly the same, except for the payment of this trackage charge. The engines and crews of the defendants still hauled this live stock to the stock yards precisely as they had in the past. The sole result of the imposition of this terminal charge was to increase the cost to the shipper by $2 per car while the service remained identically what it had been.

In 1896 the Cattle Raisers' Association of Texas, one of the complainants in the present case, a voluntary association of persons interested in the raising and shipping of cattle from Texas and from many other States and Territories, filed with the commission a
363 petition attacking the lawfulness of this terminal charge. Soon after the commencement of that proceeding the Chicago

rate for the transportation of live stock to Chicago, naming one rate gaged in selling on commission cattle at Chicago, intervened in favor of the complainant. The defendants claimed, upon the strength of Walker v. Keenan, 73 Fed. Rep., 755, that they might segregate their rate for the transportation of live tock to Chicago, naming one rate for the service up to Chicago and a second charge for a delivery to the stock yards. The commission admitted the authority of Walker v. Keenan, as applied to the case under consideration, without approving the general principle that terminal charges should be named separate from other charges for transportation, but held that segregation was one thing and addition another. What the railways had done in this case was not to separate the rate upon this live stock, but to make an arbitrary addition to the previous rate. They were charging $2 per car more for bringing exactly the same freight and performing exactly the same service as before. The commission was of the opinion that the amount charged previous to June 1, 1894, had been a fair and reasonable compensation for this service and that the addition of this $2 charge was unjust and unreasonable.

The cost of rendering this service had, however, been increased by the amount of the trackage charge exacted by the Union Stock Yards & Transit Company, and it was the opinion of the commission that the carriers might properly increase their rate correspondingly. This charge was 80 cents in some cases and $1.50 in others, but competitive conditions were such that all the defendants must make the same terminal charge. To have allowed each railway to impose a charge equal in amount to the trackage charge paid by it and no more would have compelled all the defendants to reduce this charge to 80 cents per car, although many of them paid $1.50. Under these circumstances it seemed just to permit the making of a charge of $1 by all the defendants, and such was the conclusion reached. Cattle Raisers' Association of Texas et al. v. Fort Worth & Denver City Ry. Co. et al., 7 I. C. C. Rep., 513.

Upon the promulgation of this decision the defendants moved for a rehearing, which was denied. 7 I. C. C. Rep., 555a.

The commission entered an order in accordance with its conclusion, which the defendants declined to obey, and thereupon suit was brought to enforce the same, which finally resulted in a decision by the Supreme Court of the United States directing that the petition be dismissed. Interstate Commerce Commission v. Chicago, Burlington & Quincy R. R. Co. et al., 186 U. S., 320.

The Supreme Court held that the commission was warranted in finding that the handling of carloads of live stock to the stock yards had not been a gratuity previous to June 1, 1894, and that the
364 imposition of the $2 terminal charge without any justification was unlawful. The report of the commission stated that after the imposition of the $2 charge rates from certain territory involved had been reduced by an amount exceeding the amount of the terminal charge and did not state the reason for the reduction nor define the territory to which it applied. Since the total through rate, including

the terminal charge from this territory, would be less after this reduction than it had been before the addition of the $2 charge, the court was of the opinion that, in the absence of any showing as to the cause of the reduction, the total rate, including the terminal charge, must be considered reasonable from territory affected by the reduction; and further, since there was nothing in the case from which that territory could be defined, it was impossible to enforce the order of the commission as to any territory.

After the promulgation of this decision the Cattle Raisers' Association of Texas and the Chicago Live Stock Exchange, the complainants in the present proceeding, filed a petition with the commission setting forth that rates from that territory from which reductions had been made in 1896 had been advanced and were then higher than before June 1, 1894. This petition prayed that the commission would reopen the case, define this territory, and order the carriers to desist from the imposition of the terminal charge from that and from all other territory.

The defendants insisted that by the decree dismissing the bill of the commission to enforce its order the whole case was finally ended and that nothing further could be done in that proceeding.

The Supreme Court, at the conclusion of its opinion, had used the following language:

"It follows that the decree of the circuit court of appeals, which affirmed the decree of the circuit court, refusing to command compliance with the order of the commission, was right, and it must therefore be affirmed. We think, however, in view of what has been said, and in order to prevent all possible misconception, that it should be stated that nothing in the decree refusing to execute the order of the commission should be construed as preventing that body, if it deems it best to do so, from hereafter commencing proceedings to correct any unreasonableness in the rate resulting from the additional charge as to any territory to which the reduction referred to in the opinion, if any such there be, did not apply."

The commission held that with respect to the territory covered by the reductions of 1896 no further steps could be taken in that proceeding, but that with respect to all other territory, by the very words of the opinion of the Supreme Court, further steps might be taken, and we were of the opinion that it was within our discretion to determine whether these further proceedings should be had upon a new petition or by a continuation of the former suit. We accordingly reopen that case as to all territory except that covered
365 by the reductions of 1896, with leave to all parties to introduce such further testimony as they might desire. Cattle Raisers' Asso. of Texas et al. v. Chicago, Burlington & Quincy R. R. Co. et al., 10 I. C. C. Rep., 83.

Upon the original trial no testimony had been introduced touching the reasonableness of rates upon live stock to Chicago before or after the imposition of the terminal charge. Upon the rehearing much testimony to that point was produced by both parties. The

defendants sought to show that such rates had, before June 1, 1894, become unduly low, so that even after the imposition of the $2 charge they were still reasonable; and they further claimed that if this were not the case previous to that date such rates had since, owing to reductions and to increased cost of operation, become so unremunerative that the addition of this charge was justifiable. The complainants, upon the other hand, insisted that the rates were sufficiently high before June 1, 1894; that advances rather than reductions had been the rule since then, and that while the cost of operation had increased, this had been more than offset by the increase of traffic.

The commission found that rates on June 1, 1894, were sufficiently high to include a delivery at the stock yards, if no trackage charge had been imposed by the Stock Yards Company; that while rates subsequent to that date had been sometimes advanced and sometimes reduced, these changes had been made for other reasons and had no reference to the terminal charge; that live-stock rates had been at all times since June, 1894, and were then, sufficient to include a delivery at the stock yards, and that the imposition of this charge was unlawful, except in so far as it was justified by the increased cost of service owing to the trackage charge. The defendants were therefore ordered to desist from imposing the $2 charge with respect to all territory except that from which the reductions of 1896 had applied, which was defined in the eport of the commission.

This report was made August 16, 1905. Cattle Raisers' Association of Texas et al. v. Chicago, Burlington & Quincy R. R. Co. et al., 11 I. C. C. Rep., 277. No proceedings have ever been begun for the enforcement of the order then entered.

On December 3, 1906, the complainants, the Cattle Raisers' Association of Texas and the Chicago Live Stock Exchange, filed their petition in the present proceeding, setting up the facts hereinbefore stated, alleging that the imposition of the $2 terminal charge had been and still was unlawful under the first section of the act, because unjust and unreasonable, and a discrimination in violation of the third section, inasmuch as this charge was imposed at Chicago while not imposed under similar conditions at rival markets, and praying
366 that the commission would order the carriers to desist from making any terminal charge whatever, or, if in its opinion some charge might be made, then, that it would fix the amount of that charge.

The manifest purpose of this new proceeding was to gain the benefit of the increased authority conferred upon this commission by the amendments of June 29, 1906.

Under stipulation of parties all the testimony taken in the former proceedings is before us, and considerable additional testimony has been introduced in this proceeding. The issues are the same as heretofore, and the cause has been argued and submitted by counsel upon the same general lines.

We see no reason to change our former holding in this matter. We are of the opinion that live-stock rates from points in other States and Territories to Chicago over the lines of the defendants are sufficiently high to include a delivery at the Union Stock Yards, save for the trackage charge exacted by the Stock Yards Company, and that the imposition of the $2 terminal charge for such delivery is unjust and unreasonable. In view of this trackage charge as applied to competitive conditions at Chicago, we are of the opinion that these defendants may reasonably impose a charge of $1 per car and not more.

The complainants insisted that this entire charge ought to be condemned by the commission, for the reason that the defendants, even though required to make payment for the use of the tracks of the Stock Yards Company, nevertheless make deliveries of this live stock at the stock yards cheaper by far than they deliver other carload freight in the city of Chicago.

The original case did not show the cost of making delivery of other kinds of carload freight at this market, but the present record shows that the average cost to one defendant, the Atchison, Topeka & Santa Fe Railway Company, of delivering all kinds of carload freight, including live stock, is $5.40 per car, while the cost of delivering live stock is not far from $2 per car. The testimony further indicates that the average cost of delivering all kinds of carload freight does not differ much in the case of the Sante Fe from that in the case of the other defendants, although it does appear that several of the defendants are at greater expense than $2 per car in making delivery of live stock at the stock yards. We think it fairly appears upon this record that the total cost to these defendants of delivering live stock at the Union Stock Yards, including the trackage charge, is not much, if any, above one-half the average cost of handling all carload freight in the city of Chicago.

There is, therefore, some force in the suggestion of the complainants, but inasmuch as these rates had been adjusted previous to June 1, 1894, upon the basis of a delivery at the stock yards, we
367 think these carriers may fairly impose a charge which will, on the average, recoup them for the additional expense of delivery entailed by this charge of the Stock Yards Company.

As already said, the defendants insisted in the former case that this whole matter had become res judicata by the dismissal of the petition brought to enforce the order of the commission, and they entered a special appearance under benefit of this claim in all proceedings subsequent to that decision. Some, and perhaps all, of these defendants claim that this suit upon the same subject-matter is for the same reason barred.

It would seem plain that proceedings before this commission can not be made the subject of judicial estoppel. The decision of a court once made is final, because, for one reason, the facts upon which that decision rests are always the same; but the facts upon which controversies before this body are determined vary from day to day. A

rate, regulation, or practice may be unreasonable now, although a year ago it was entirely reasonable.

This commission has held that while it will not, ordinarily, reexamine a matter which has been fully heard and passed upon unless changed conditions are shown, this is for reasons of convenience and not because of any legal requirement. Railroad Commission of Kansas v. Atchison, Topeka & Santa Fe Ry. Co., 8 I. C. C. Rep., 304, 308; Cattle Raisers' Association of Texas v. Chicago, Burlington & Quincy R. R. Co. et al., 10 I. C. C. Rep., 83, 106. The Supreme Court of the United States has apparently declared that the determination of a rate for the future, which is the function exercised by the commission in this proceeding, is legislative rather than judicial. Reagan v. Farmers' Loan & Trust Co., 154 U. S., 362; Interstate Commerce Commission v. Cincinnati, N. O. & T. P. Ry. Co., 167 U. S., 479.

Exactly what the effect might be upon the right of the commission to reexamine at some subsequent time a particular rate if the court, upon proceedings for that purpose, should restrain the enforcement of an order of the commission putting in a substitute for that rate is not considered. We hold that a decree dismissing the bill brought to enforce an order of this commission made previous to the amendment of June 29, 1906, is not a bar to the right of the commission to examine with respect to the present time the same rate involved in that proceeding.

It may be noticed that this question can not arise as to most of the rates involved here. The Supreme Court, in dismissing the petition of the commission, expressly stated that its action should not prevent the taking of subsequent steps with respect to all territory not covered by the reductions of 1896. The defendants objected to a reopening of the original case, since that was not a "beginning" of pro-
368 ceedings, but the present suit is strictly a new proceeding and not, therefore, obnoxious to that objection.

The only territory about which the question can arise is that covered by the reductions of 1896, referred to in the opinion of the Supreme Court. In order that the court may now have before it the necessary information upon which to modify our order, if erroneous for this reason, we here define that territory, which was as follows:

The entire State of Texas north and west of the Galveston, Harrisburg & San Antonio Railway and the Houston, East & West Texas Railway, including stations on the former and excluding those on the latter; also all stations in Indian Territory and Oklahoma Territory upon the Missouri, Kansas & Texas Railway, the Rock Island system, including the St. Louis & San Francisco Railroad and the Atchison system.

These reductions were made October 1, 1896, and were, as a rule, 5 cents per 100 pounds. In February, 1899, rates from this same territory were generally advanced 2½ cents per 100 pounds, and in December of the same year there was a second advance of 3 cents, making a total advance of 5½ cents per 100 pounds and leaving in effect a rate somewhat higher than before the reduction of 1896. In the spring of

1903 these rates were again increased 3 cents per 100 pounds, and this is the rate now in effect.

There is another phase of this matter. Cattle from much of the territory involved can be marketed at several different points, like Chicago, St. Louis, Kansas City, and Omaha, and the rate is an important factor in determining to which of these markets they shall be sent. For many years previous to 1894 a certain relation in rates had been maintained between these markets. If any change was made to one market, a corresponding change was ordinarily made to all others. When this $2 charge was imposed at Chicago no similar charge was made elsewhere, and the cost of transporting live stock to Chicago was increased by that amount, as compared with these other competitive markets. The complainants insist that this was an undue discrimination against Chicago.

We held, in City Council of Atchison v. Missouri Pacific Ry. Co. et al., 12 I. C. C. Rep. 127, that where the defendants had for a long time treated certain Missouri River points as entitled to common rates and facilities and had thereby built up grain markets at these points, they must afford at one the same services in handling grain which they accord at others. Upon the same principle these carriers must not, in the absence of some justifying excuse, impose a terminal charge at Chicago and not at other markets; and we are further of the opinion that it is incumbent upon the defendants to show what that justification is, when, for the first time after many years,
369 the apparent discrimination is created. The record discloses, as we have found, a sufficient reason for imposing a charge of $1, but, in your opinion, anything beyond that works an undue discrimination against Chicago as a live-stock market, in favor of Kansas City, St. Louis, and Omaha.

All questions as to reparation are reserved for further proceedings.

CLARK and HARLAN, Commissioners:

We are not able to agree with the reasoning or the conclusions of the majority opinion in this case.

ORDER.

Upon the foregoing report—

It is ordered that the defendants, the Chicago, Burlington & Quincy Railroad Company; Chicago Great Western Railway Company; Chicago & Northwestern Railway Company; Chicago, Milwaukee & St. Paul Railway Company; Chicago & Alton Railroad Company; Chicago, Rock Island & Pacific Railway Company; Atchison, Topeka & Santa Fe Railway Company; and Illinois Central Railroad Company, be, and they are hereby, required to cease and desist on or before the 1st day of February, 1908, from exacting for the delivery of live stock at the Union Stock Yards, in Chicago, Ill., with respect to shipments of live stock transported by them from points outside of that State, their present terminal charge of $2 per car.

It is further ordered that said defendants be, and they are hereby, notified and required to establish and put in force on or before the 1st day of February, 1908, and apply thereafter during a period of not less than two years, for the delivery of live stock at the Union Stock Yards, in said Chicago, with respect to shipments of live stock transported by them from points outside the State of Illinois, a terminal charge which shall not exceed $1 per car, if any terminal charge is maintained by them.

371 EXHIBIT B.

CATTLE RAISERS' ASSOCIATION OF TEXAS, complainant, and The Chicago Live Stock Exchange, intervener,

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY; Chicago Great Western Railway Company; Chicago & Northwestern Railway Company; Chicago, Milwaukee & St. Paul Railway Company; Chicago & Alton Railroad Company; Chicago, Rock Island & Pacific Railway Company; Atchison, Topeka & Santa Fe Railway Company; Wabash Railroad Company; and Illinois Central Railroad Company. } No. 466.

Decided August 16, 1905.

1. A railroad company may maintain its live-stock depot at a particular point, although it neither builds nor repairs nor insures the stock pens into which the stock is unloaded, and does not hire or control the men who do the unloading; and whether the Union Stock Yards at Chicago have been, in railroad phraseology or in legal definition the depot of defendants is immaterial, for they were, and still are, in fact the point to which the stock is transported and unloaded under the shipping contract of defendants.
2. Excluding the territory covered by the reduction of 1896, which is described in the findings, live-stock rates to Chicago participated in by defendants were on May 31, 1894, reasonable compensation for the service performed, including delivery at the Union Stock Yards in Chicago. At all times since that date such rates have been, and now are, sufficiently high to include a delivery at the stock yards as such delivery was made prior to June 1, 1894. While since that time there have been advances and reductions from some points, they have been about equal, averaging probably less than one cent per 100 pounds and the great majority of rates remain the same as they were on May
372 31, 1894. These scattered reductions, as well as the advances,

applied variously, some on cattle, some on sheep, and others on hogs. No change in the rate has been made to offset the addition of the terminal charge in Chicago of $2.00 per car, or with any reference to such charge. The imposition of any such terminal charge, except in so far as the cost of delivery in Chicago has been increased by the trackage charge paid by defendants to the Stock Yards Company, since June 1, 1894, is unreasonable. Such increased cost of delivery, that is to say, such trackage charge, is fairly estimated for all the defendants at one dollar per car. Citing and applying Interstate Commerce Commission v. Chicago, Burlington & Quincy R. Co., 186 U. S. 320, 46 L. ed. 1182, 22 Sup. Ct. Rep. 824, Held:

First: That delivery to the Union Stock Yards prior to June 1, 1894, was included in the rate and was in no sense a gratuity.

Second: That outside of the excluded territory, a terminal charge for delivery to the Union Stock Yards in Chicago of one dollar per car is reasonable, and defendants' terminal charge of two dollars per car, exacted since June 1, 1894, is unreasonable.

Third: That the case be retained for further proceedings in the matter of reparation.

S. H. Cowan for complainant and intervener.

Ed Baxter for defendants.

C. A. Severance and Frank B. Kellogg for Chicago Great Western Railway Co.

Francis H. Lynde for Chicago & Northwestern Railway Co.

Robert Dunlap for Atchison, Topeka & Santa Fe Railway Co.

REPORT AND OPINION OF THE COMMISSION.

PROUTY, Commissioner:

This is the fourth report which the commission has had occasion to make in this matter and in order to understand the questions presented for consideration now a brief history of the case is necessary.

On June 1, 1894, the railways entering the city of Chicago imposed a charge of $2.00 per car for the delivery of live stock at the Union Stock Yards. September 1, 1896, the Cattle Raisers' Association of Texas filed a complaint alleging the unlawfulness of this terminal charge, and on March 10, 1897, the Chicago Live Stock Exchange intervened in favor of the complainant. The original
373 complaint only put in issue the lawfulness of this terminal charge when applied to shipments of cattle from certain territory, but the intervening petition attacked the charge as to all live-stock shipments delivered at the Union Stock Yards by the above defendants, who have answered that petition.

After investigation the commission, on January 20, 1898, published its report and opinion holding that the charge was unreasonable to the amount of $1.00 per car, and stating that an order would be made

requiring the defendants to cease and desist from continuing to impose the charge of $2.00, 7 I. C. C. Rep. 513. Subsequently the defendants filed a motion for rehearing, which, after further argument, was denied August 4, 1898, 7 I. C. C. Rep. 555a; and thereupon an order was made pursuant to the original opinion, the question of reparation being reserved for future consideration. The defendants having refused to obey the order, legal proceedings were instituted for its enforcement which finally resulted in the affirmance by the Supreme Court of the United States of the decree of the Circuit Court dismissing the petition of the commission, Interstate Commerce Commission *v.* Chicago, B. & Q. R. Co., 186 U. S. 320, 46 L. ed. 1182, 22 Sup. Ct. Rep. 824, but with this qualification:

Previous to June 1, 1894, live stock had been delivered by the defendants at the Union Stock Yards at the Chicago rate. In making such delivery the various defendants had operated their trains over the tracks of the Stock Yards Company without charge to them by that company. On June 1, 1894, the Stock Yards Company imposed for the first time a trackage charge which amounted in some cases to 80 cents per car, and in other cases to $1.50 per car, whereupon the defendants had imposed this charge of $2.00 per car. The commission held that the expense of delivery at the stockyards had, previous to June 1, 1894, been included in the Chicago rate; that this expense to the carriers was increased by the action of the Stock Yards Company on the average $1.00 per car, and that, therefore, the defendants might properly increase their own charges $1.00 per car; but that in imposing $2.00 they exceeded what was just and reasonable by the amount of $1.00.

374 In 1896 live stock rates from certain of the territory complained of had been reduced 5 cents per hundred pounds, amounting to from $10 to $12 per car, and this fact was stated in the report of the commission. The Supreme Court held that the commission was right in its conclusion that the expense of delivery had been previously included in the through rate, and that the defendants were not justified in imposing the additional charge of $2.00 when the expense to them had only been increased by $1.00; that, therefore, the entire rate which the shipper was compelled to pay was $1.00 too high; but, inasmuch as the rates from certain territory had been reduced by an amount much greater than the addition made by the terminal charge, the court was of the opinion that the total rate was still sufficiently favorable to the shipper; and, since the report of the commission left it doubtful whether this reduction of 5 cents applied to all the territory in question, or if it applied to a part only did not definitely define that part, the court could not enforce the order of the commission as made, but was compelled to affirm the decree declining to enforce the order. The court stated, however, in concluding its opinion, that its decision and consequent decree were to be without prejudice to the right of the commission to subsequently proceed with respect to that territory to which the reductions did not apply, if such there was.

On February 28, 1903, the Cattle Raisers' Association of Texas and the Chicago Live Stock Exchange filed a petition asking the commission to proceed with the matter of reparation, and also to reopen the case with a view to defining the territory to which the reduction of five cents per hundred pounds did not apply, and making an order in respect to that territory. This petition was granted, and the defendants notified to file such answers in the premises as they might desire. It had appeared in the original case that only the defendants whose lines entered Chicago were interested in the imposition of this $2.00 charge, and accordingly the original order of the commission had been directed against only these defendants. The
375 petition for a reopening of the case only included these same railways, which were the Chicago, Burlington & Quincy; the Chicago Great Western; the Chicago & Northwestern; the Chicago, Milwaukee & St. Paul; the Chicago & Alton; the Chicago, Rock Island & Pacific; the Atchison, Topeka & Santa Fe; the Wabash; and the Illinois Central.

The defendants, instead of answering, filed a motion to vacate the order of the commission to proceed with the matter of reparation and to reopen the case. They contended that the affirmance of the decree finally dismissing the petition of the commission to enforce its order to cease and desist from imposing the terminal charge concluded all proceedings of every nature whatsoever in the original case; that no reparation could be had and no further steps taken in that case to compel the carriers to desist from imposing this terminal charge. The commission, after having fully heard the parties and considered the matter, decided, first, that the matter of reparation was not connected with nor controlled by the order to cease and desist; that in the report which led up to the making of that order the commission had expressly reserved the subject of reparation for further consideration; and that while a decision upon the order to desist might be of such a character as to necessarily control the awarding of reparation, it was in no sense an adjudication of that subject. It therefore held that it might properly proceed at the present time with that branch of the case, and stated that it would do so.

It was held, secondly, with respect to the order to cease and desist, that, as to all territory over which the reduction of 1896 applied, the original case was ended and no further steps could be had, but that it was still open to the commission to inquire what that territory was and to proceed with respect to territory not embraced in those limits to correct the unreasonable rates produced by the exaction of this $2.00 charge. This, in the opinion of the commission, it might properly do by reopening the case which had been already heard. It therefore decided that it would reopen such case for the purpose of permitting the complainant to show to what territory that reduction applied; and inasmuch as conditions might have changed between the
376 date of our previous hearing in 1898 and the present time, it seemed proper to permit the defendants to prove, if they could, that rates from territory to which the reduction in question

did not apply were, nevertheless, so low, either by virtue of subsequent reductions or by reason of changed conditions, that the rate, plus the terminal charge, did not impose an excessive transportation charge upon the shipper.

The complainant requested that the matter of reparation might be further held in abeyance until the opinion of the court could be had upon the other branch of the case, since this might result in the saving of expense and inconvenience to all parties. The defendants made no objection to this, and the commission accordingly consented. The only branch of the case before us, therefore, at this time is that relating to an order for the future, and in the hearing of that but two questions of fact are open, which are:

1. To what territory did the reduction of 5 cents, mentioned in the previous report of this commission, as made October 1, 1896, apply.

2. As to the remaining territory, have the rates to Chicago become so low that the addition of the $2.00 terminal charge is not unjust and unreasonable. A third question of fact was gone into and has been considered by the commission, but that will be referred to later.

The defendants protested that the commission had no jurisdiction in the premises, excepted to its action in proceeding further in this case, and appeared specially in all these hearings.

1. The territory covered by the reduction of October 1, 1896, embraces the entire State of Texas north and west of the Galveston, Harrisburg & San Antonio Railroad, and the Houston, East & West Texas Railroad, including stations on the former and excluding those on the latter; also all stations in Indian Territory and Oklahoma Territory upon the Missouri, Kansas & Texas Railroad, the Rock Island system, and the Atchison system.

The reductions in this territory were not all 5 cents per hundred pounds to Chicago. That was the maximum, and applied to the greater part of the territory described, but in some sections
377 the reduction was less. These reductions appear to have applied only on cattle, the kind of live stock principally shipped to Chicago from this section. In 1902—the figures for later years are not available—2,924,124 cattle and calves were received at Chicago. Of these only 73,794 were from the State of Texas, and probably not more than 100,000 from the entire territory covered by these reductions. As to twenty-nine thirtieths of the shipments of the defendants, the exaction of this terminal charge has been illegal.

2. In order that the findings of fact with respect to the territory to which the reductions in question did not apply and which is, therefore, still before the commission in this proceeding, may be intelligible it is necessary to state what, as we understand the matter, the question of fact presented is.

It was held by the commission in the former case that while the carriers might segregate their rate, imposing a separate charge for delivery at the Union Stock Yards their action in adding to the former rate an arbitrary terminal charge was not in any proper sense such

a segregation; that the former rate to Chicago included a delivery at the Union Stock Yards and, therefore, that when the carriers added a charge of $2.00, while the expense of making the delivery had only been increased $1.00, they imposed upon the public an unreasonable transportation charge to the extent of $1.00. This view of the matter has been apparently approved by the Supreme Court of the United States.

A carload of live stock weighs approximately 20,000 pounds, so that $2.00 per car is equivalent to about 1 cent per hundred pounds. If, therefore, the carriers had reduced the Chicago rate by 1 cent a hundred pounds, or under the circumstances of this case, by ½ cent per hundred pounds and added this terminal charge, the through rate to the stock yards would still have been reasonable, their conduct in this respect would have been unexceptionable, and since terminal expenses of this kind are usually deducted before a division of the through rate, the carrier performing the special service would have received compensation for it. It is evident that if the Chicago rate was less than a fair compensation for delivery at the Union
378 Stock Yards by ½ cent per hundred pounds then the addition of the $1.00 terminal would not have produced an unreasonable charge in gross. It was said upon the argument of the original case that live-stock rates to Chicago were unreasonably low before June 1, 1894, and that for this reason the addition of the terminal charge was proper. There was, however, no testimony upon that subject and the commission held that in the absence of such testimony it must presume that the rate which the carrier had voluntarily established and was maintaining on May 31, 1894, was a reasonable rate including the entire service of delivery at the stock yards; and this view of the commission has apparently received the approval of the Supreme Court. But in the present record there is a great mass of evidence from both parties bearing upon the reasonableness of these rates; so that the question of fact before us is, were these rates so low in 1894, or are they, under changed conditions, so low to-day that the carriers may justly add this terminal charge without any equivalent reduction of the Chicago rate?

It seems necessary first to examine somewhat the history of these rates since 1894. The commission has caused elaborate tables to be prepared showing rates from nearly all cattle-shipping stations in territory west of the Mississippi River to Chicago, so that there is presented a complete history of these rates from all these stations from May 31, 1894, to May 23, 1904. It would not be profitable to attempt any complete statement of what this testimony shows, but certain illustrative examples may be given and for this purpose we will refer to the Chicago & Alton, the Burlington, the Rock Island, the Northwestern, and the Chicago, Milwaukee & St. Paul systems. It should be noted that from nearly all this territory cattle, sheep, and hogs are all marketed so that from each of the stations referred to there are usually three separate rates which are almost always dif-

ferent in amount and one of which may change without a corresponding change of the others.

There are shown by these tables on the Chicago & Alton in Missouri 53 stations, from which there were in effect May 31, 1894, 159 rates.

Between May 31, 1894, and May 23, 1904, there were 50 ad-
379 vances and 3 reductions. In case of the Rock Island system there were shown in Iowa, Missouri, and Kansas 215 stations with 645 rates. The advances were 216 and the reductions 18. The Northwestern system, not including the Elkhorn division, showed in the States of Wisconsin, Minnesota, South Dakota, Nebraska, North Dakota, and Iowa 599 stations with 1,797 rates. The advances were 214, the reductions 219. The Burlington system in Iowa and Missouri showed 333 stations with 999 rates, the total advances being 300, the reductions 33. The Chicago, Milwaukee & St. Paul showed 868 stations and 2,604 rates, with 229 advances, 443 reductions.

It will be seen, therefore, that the great majority of these rates remained exactly the same from 1894 down to 1904. The advances and reductions were about equal, and both advances and reductions were slight, on the average not probably equal to 1 cent per hundred pounds. In this finding we do not include either the territory to which the reduction of 1896 applied, or the territory covered by the case of the Cattle Raisers' Association of Texas hereafter referred to.

These changes in rates seem to have been made for various reasons. It was testified by all traffic officials that in the making of the Chicago rate, and, therefore, in the making of these changes no consideration whatever had been given to the terminal charge. When the initial line was not also the delivering line the rate was made by the initial line, which did not receive any part of the terminal charge, and even when the same line originated and delivered the traffic the terminal service was not considered. It was not claimed that any particular rate was too low by reason of these reductions unless the general level of live stock rates was too low.

We have said that the present record contains much testimony bearing upon the reasonableness of live stock rates to Chicago. The defendants contend and have introduced evidence tending to show that these rates on May 31, 1894, were not fairly compensatory even after the terminal charge had been added, and that even if they were sufficiently high on that date they are, owing to increased cost of
operation, too low at the present time. The complainant has
380 met this with the claim that they were unreasonably high in 1894 and that notwithstanding the increased cost of labor and supplies the actual expense of operation, owing to the adoption of various economies, is no more to-day than ten years ago, and that in view of the great increase of tonnage, rates should be lower, not higher, than they were in 1894.

Since 1899 cattle rates have been three times advanced from that territory to which the reduction of 1896 applied and are now higher than they have ever been since rates were first filed with the commission in 1887. Upon the making of the last advance in 1903 the Cattle

Raisers' Association of Texas filed complaint against the Missouri, Kansas & Texas Railway Company and many other railway companies attacking the reasonableness of rates from this territory and also from certain other territory west of the Missouri River and a great mass of evidence has been taken in that case. In addition many hundred pages of testimony were taken in this case. Written and oral arguments of great length and detail have been presented. We have before us in these two inquiries everything that can be shown and said as to the reasonableness of live stock rates from all points on shipments delivered by these defendants at Chicago.

In the opinions of the commission in the Cattle Raisers' Association of Texas *v.* The Missouri, Kansas & Texas Railway Company et a. post—and In the Matter of Class & Commodity Rates from St. Louis to Texas Common Points, ante—the subject of live stock rates, and the effect of the advance in the cost of labor and supplies on rates have been folly discussed. No special question arises with respect to these defendants. With two exceptions, possibly, they are among the most prosperous railroad systems in the whole country. Their earnings afford a munificent return upon the value of their properties when estimated by any standard. Not only have they in recent years paid and are to-day paying dividends upon their stocks much in excess of the average return of all kinds of property in the United States, but they have also out of their earnings continually improved those properties. The market value of their stocks is for the most part much above par.

381 It would not be profitable to repeat what is said in those opinions. Excluding the territory covered by the reduction of 1896 we find that live stock rates to Chicago made or participated in by these defendants were on May 31, 1894, a reasonable compensation for the service performed, including delivery at the Union Stock Yards; that at all times since May 31, 1904, such rates have been and now are sufficiently high to include a delivery at the Stock Yards as made previous to June 1, 1894; that no reduction has ever been made in any of these rates to offset the addition of the terminal charge of $2.00 per car; and that the imposition of any such charge, except in so far as the cost of delivery has been increased by the trackage charge which the defendants are compelled to pay is unreasonable.

In its former report the commission had found that previous to June 1, 1894, a delivery at the stock yards had been included in and paid for by the Chicago rate. The defendants had contended that this service was, previous to that date, a gratuity, but had introduced little direct testimony upon that point. Upon this hearing counsel asked that they be allowed to introduce further testimony in that behalf and that the commission reconsider, in view of such testimony, its former finding. Since it seemed desirable that all the facts should be fully presented the commission consented to hear this testimony and thereupon counsel produced on the part of each defendant one of the principal traffic officials of that company who

testified that previous to June 1, 1894, his company had performed the service of making delivery at the stock yards beyond its own line for nothing. On the strength of this testimony the defendants insist that the commission should reconsider its finding and now find as a matter of fact that this service had been, until the terminal charge was imposed, a gratuity. Since certain other testimony was brought out in the examination of these witnesses which bears upon this point it may be well to restate briefly our findings of fact in this respect.

Previous to 1865 live stock marketed in Chicago was delivered at four different points, and competitive conditions re-
382 quired all carriers to make delivery at either one of these points according as the shipper might direct. This led to much expense and inconvenience upon the part of the carriers making such deliveries and for the purpose of avoiding this the Union Stock Yards and Transit Company was organized. The purpose of that undertaking was to provide one place at which live stock would be delivered in the city of Chicago.

The movers in this enterprise were originally the railway companies interested. At first the stock was largely owned by the various railway lines bringing live stock to Chicago, but subsequently and from time to time this stock interest was transferred so that on June 1, 1894, the stock holdings of the railways in the Union Stock Yards and Transit Company were slight, if any. At first the directors of that company consisted almost entirely of representatives of the different railways interested, and a majority of the board continued to be made up in this manner until the management of the stock yards made known its determination to impose the trackage charge, June 1, 1894, when the various railway representatives resigned from the board of directors.

According to the original arrangement the Stock Yards Company was to construct, own and operate pens, shutes, tracks and other facilities for unloading, delivering, and marketing live stock. It was to construct tracks connecting its yards with the various lines of railway and to permit the railways to operate their own trains over these tracks to the unloading shutes without charge. All this was done as arranged. The stock yards were constructed by the Stock Yards Company and tracks laid connecting these yards with the various lines of railway. The railways ran their own trains, drawn by their own locomotives over these tracks of the Stock Yards Company without charge, but the Stock Yards Company received 25 cents a car for the service of unloading the cars of stock. While the original arrangement and understanding was that the railways should be given the free use of the tracks of the Stock Yards Company for the purpose of reaching the shutes and delivering live stock at the stock pens no formal contract of that sort was ever
383 entered into. Upon the one hand the railways were under no obligation to use these tracks or to unload their live stock at the stock yards and upon the other the Stock Yards Company was

under no legal liability to permit the various railways to use its tracks in obtaining access to its shutes and pens.

The actual outcome of this enterprise was precisely that which its original promoters had contemplated. All live stock, in a very short time, which was intended for the Chicago market was sent to the Union Stock Yards, and the stock yards which had been formerly used as pens of delivery were abandoned. From 1865 down to June 1, 1894, practically all the stock brought to Chicago for sale or other distribution was delivered at the Union Stock Yards. Several of these defendants had no facilities whatever except their station platforms for unloading stock at any other point, while others of them had stock pens at which live stock in very limited quantities could be discharged. Stock received for shipment to Chicago was sent to the Union Stock Yards as a matter of course without further direction upon the part of the shipper. Ordinarily the only destination mentioned in the live stock contract which the shipper was obliged to sign was Chicago, and under that contract the stock was taken to the Union Stock Yards. The tariffs of the defendants all specified a rate to Chicago, and under this tariff the public were entitled to ship to the Union Stock Yards.

It appeared in testimony upon the last hearing that a single system, the Burlington, had required in some cases previous to June 1, 1894, that their agents should ascertain the final destination of the stock and should waybill it accordingly. Considerable quantities of stock brought by that company to Chicago were destined to eastern points beyond Chicago, and this would not necessarily go to the Union Stock Yards. It might also happen occasionally that parties would desire to unload stock, especially horses and mules, at some other point than the Union Stock Yards. For these reasons, apparently, as a competitive measure, that company had provided, as stated in its circular of 1891, pens for the accommodation of eight carloads of
384 stock at Hawthorne avenue, and this circular required agents to call the attention of shippers to the fact that these pens were available for the purpose of unloading and resting stock without charge. The circular instructed agents to ascertain the final destination of the stock and to bill it to the Union Stock Yards or to Chicago, as the case might me. This was for the convenience of the Burlington road in the handling of this traffic. It appears that this company, like all the others, delivered, as a matter of course, all stock to be disposed of at Chicago at the Union Stock Yards.

An examination of the testimony of the traffic representatives of the various defendants who were produced as witnesses and testified upon the last hearing that the service of making delivery at the stock yards was a gratuity previous to June 1, 1894, shows that they based this assertion entirely upon the fact that the stock yards were not located upon the rails of their respective companies. They stated that in their opinion any service performed by a railroad beyond its own iron must of necessity be a gratuity, and hence this service was a

gratuity. They testified to no fact which contradicted the evidence already before the commission; indeed, their testimony was strongly confirmatory of that evidence; they simply gave their opinion upon the conceded facts.

We hardly think that the expression of this opinion can be of much value as evidence. For example, the Illinois Central Railroad Company, previously to June 1, 1894, had no stock yards of its own in the city of Chicago. It occasionally delivered a carload of horses or mules upon its freight platforms, and it made deliveries at one or two private yards when stock was consigned to the owners of those yards, but the only point to which it could and did deliver live stock in the city of Chicago was at the Union Stock Yards. Now, how can it in any way modify the fact when Mr. Keepers, the general freight agent of that company, testifies that according to his understanding the service of his company beyond its own iron must be a gratuity? We find as a fact, in so far as this question is a question of fact, that previous to June 1, 1894, a delivery at the Union Stock Yards was included in the contract of shipment to Chicago, and paid for by the rate to Chicago.

385 The facts as to facilities for delivery at points other than the Union Stock Yards by these various defendants at the present time were clearly brought out on the last hearing and should also be noted. The Wabash Company has no such facilities whatever and can and does only make delivery of live stock at the Union Stock Yards. Mr. Peabody, the statistician of the Atchison, Topeka & Santa Fe, was delegated to ascertain the location of the stock yards of the various defendants and give testimony upon that point. He stated that he had written the general freight agent of the Chicago & Alton asking the location of its stock yards and had been informed by him that his company had no stock yards at Chicago. The other defendants all have points at which they can make delivery of live stock in limited quantities upon their own rails. In cases where such facilities existed previous to June 1, 1894, they do not appear to have been enlarged. Where such facilities did not exist they have been provided for the purpose of being able to state that they in fact exist. These facilities are used in exactly the same manner and to no greater extent now than they were before the imposition of the terminal charge. It appeared that between 500 and 600 carloads of stock were unloaded each year by the Burlington system at its Chicago yard, but it did not appear that any of these were for disposition in Chicago. With the exception of horses and mules to some extent, and an occasional carload of sheep and cattle, live stock for sale in Chicago is now taken to the Union Stock Yards in exactly the same way that it was before the $2 charge was imposed.

One other fact may perhaps be stated. It was suggested in the original report that the defendants probably made delivery of live stock at the Union Stock Yards as cheaply as they could provide facilities of their own and as cheaply as they delivered other car-

load freight in the city of Chicago, but there was no testimony from which a definite finding could be made. Such evidence was given upon the last hearing. Mr. Peabody, above mentioned, testified that the actual cost to his company of making deliveries of all carload freight in the city of Chicago either at final destination or to some connecting road for shipment beyond was $5.40 per car. He
386 also said that he knew of no reason why the expense of the Santa Fe system was greater in this particular than that of other lines entering Chicago. Upon this testimony we find that the expense of delivering carload freight by the defendants in Chicago is approximately $5.40 per car.

Upon the former hearing the Sante Fe Company filed a statement showing that the cost of delivering carloads of live stock at the Union Stock Yards was $2.28 per car, including trackage and 25 cents per car for unloading. Delivery by that company seems to be made at the present time at a somewhat less expense than formerly, owing to the fact that it pays either a less trackage charge or no trackage charge for the use of certain lines by which it reaches the rails of the Union Stock Yards and Transit Company. Mr. Peabody gave in detail the expense of making deliveries for two months, viz, January, 1904, $1.79, and October, 1904, $1.77. In both these computations the cost of unloading was included and also the station expense of that company at the Union Stock Yards, which was for the two months about two-thirds as much as the expense of operating its trains to and from the stock yards.

CONCLUSIONS.

The able attorney for the defendants, who appeared for the first time in this last hearing, has urged upon us with great earnestness certain considerations not much insisted upon in the former stages of this case, which should, he argues, lead to a modification of our previous conclusions of law. He urges, first, that the Union Stock Yards can not be to-day and can not have been in the past the live stock depot of these defendants, for the reason that they do not exercise over it the same control which they exercise over their depots proper. The representatives of the various defendants were asked in detail whether their respective companies had to do with the building, the repairing, the insuring of the Union Stock Yards, or whether they appointed or directed in any way the help employed there. They all united in disclaiming any connection of this sort with that enterprise, and from this we are pressed to conclude that the stock yards could not be the depot of these defendants.
387 Some little time ago this commission heard the complaint of the Central Stock Yards Company, in which it was alleged that the Louisville & Nashville Railroad was unlawfully discriminating against the complainant in making deliveries of live stock at the Bourbon Stock Yards in Louisville, Kentucky, while it declined to

make similar deliveries at the stock yards of the complainant. The Louisville & Nashville Co. was represented by the same learned attorney who now represents these defendants, and in that suit his defense was that the Louisville & Nashville had made the Bourbon Stock Yards its exclusive live stock depot. The Bourbon Stock Yards Company constructed all the facilities, kept them in repair, insured them if they were insured, controlled the help and indeed assumed the entire control and management of the plant and yet it was urged that these stock yards were the live stock depot of the Louisville & Nashville Railroad. Counsel enforced that contention by reason as well as by the highest judicial authority and the commission held with him. Central Stock Yards Co. v. Louisville & N. R. Co., 192 U. S. 568, 48 L. ed. 565, 24 Sup. Ct. Rep. 339; Railroad Commission v. Louisville & N. R. Co., 10 I. C. C. Rep. 173.

In that case the defendant railroad company had entered into a contract with the Bourbon Stock Yards Company by which it agreed to make those stock yards its exclusive live stock depot. In this case by arrangement which never took the form of a specific contract these defendants made the Union Stock Yards their depot in exactly the same way. What we call attention to is the fact that a railroad may maintain its live stock depot at a particular point although it neither builds nor repairs nor insures the stock pens into which the cattle are unloaded nor hires nor controls the men who do the unloading. Whether the Union Stock Yards at Chicago were in railroad phraseology or in legal definition the depot of these defendants is immaterial; they were and still are in fact the point to which this stock is transported and unloaded under the shipping contract of the defendants.

Counsel vigorously insists that inasmuch as the service of transporting these carloads of live stock to the Union Stock
388 Yards was performed beyond the rails of the defendants it must have been a gratuity. It is not obvious to us why if one railroad company leases or otherwise obtains the use of the tracks of another railroad company for the purpose of performing a particular service that service must of necessity be a gratuity. Strictly speaking in such case the tracks of the first company are, quoad the performance of that service, the tracks of the company which performs the service. These defendants had the right, previous to June 1, 1894, to operate their trains over the iron of the Stock Yards Company without payment in exactly the same way that they do today by the payment of a trackage charge. The stock was in their custody then as it now is until it was delivered to the owner or his consignee at the Union Stock Yards. The defendants would undoubtedly be liable for any damages which accrued after their trains entered upon the tracks of the Stock Yards Company in exactly the same way as over any other part of the transit. Upon what definition can that be called a gratuity which the shipper has a legal right to demand and which the carrier is under legal obligation to furnish?

It is suggested that in the last ten years reductions have been made in many hundred cases which are greater than the amount of this terminal charge and that in these cases, upon the theory of the Supreme Court, the imposition of the charge is proper. We do not so understand the decision. The addition of the terminal charge is only proper when the reduction has been such that the entire rate to the Union Stock Yards is reasonable. The commission did not intend to hold in its former opinion that if the total through rate was reasonable the terminal charge would be unlawful, but rather that the mere fact of a reduction made without reference to the terminal charge, would not show, in the absence of other testimony, that the through rate was reasonable. The court seems to have entertained a different opinion; but that has no application here, since it has been found not only that these scattered reductions had no reference to the terminal charge, but also that the reduced rate was still sufficient to include a delivery at the Union Stock Yards. If the opposite view were to prevail there would be numerous instances in which the delivering charge might be applied to a carload of hogs and not to a carload of cattle shipped from the same station.

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It will be remembered that the minimum trackage charge is 80 cents per car. In our opinion the defendants are justified in imposing whatever terminal charge has been necessitated by this exaction of the Stock Yards Company. Since this charge varies in different cases these carriers might, therefore, impose different terminal charges, but it is conceded that the charge must be the same by all. To compel those paying 80 cents to make only that charge would be in effect to compel every line to reduce its charge to the same figure. It seemed to us, therefore, that it was fair under all the circumstances to allow these carriers to impose a charge of $1.00. It was stated in the opinion denying the motion for reargument that the carriers were satisfied with this, provided the charge was to be adjusted upon the basis recommended by the commission. Since the conclusion of the taking of testimony in the present hearing the defendants have filed statements disclaiming any intention upon their part to admit that $1.00 was a reasonable charge for transporting this live stock to the Union Stock Yards. Apparently these statements have been filed to rebut any presumption that the carriers had admitted that the charge found by the commission was a proper one, and if so, they in no way alter our previous conclusion. However this may be, since the commission only has power to direct the carriers to cease and desist from the present charge of $2.00, and since this charge is greater than the trackage paid by any company, the defendants will be ordered to desist from imposing the present charge as to all territory not embraced in the reduction of 1896, as described in the findings.

The case will be retained for further proceedings in the matter of reparation.

(Endorsed:) Filed May 28th, 1908. Henry D. Lang, clerk.

390 Thereafter and on May 29th, 1908, the following replication was filed of record in said cause, to wit:

In the Circuit Court of the United States within and for the District of Minnesota, Third Division.

ALPHEUS B. STICKNEY AND CHARLES H. F. SMITH, receivers of the Chicago Great Western Railway Company; *Chicago Great Western Railway Company;* Chicago, Burlington & Quincy Railroad Company; Illinois Central Railroad Company; Chicago & Northwestern Railway Company; Chicago, Milwaukee and St. Paul Railway Company; The Chicago & Alton Railroad Company; The Chicago, Rock Island and Pacific Railway Company, and The Atchison, Topeka and Santa Fe Railway Company, complainants,

vs.

THE INTERSTATE COMMERCE COMMISSION, defendants.

In equity No. 877.

REPLICATION TO ANSWER.

Come now the complainants herein, replicants herein, and saving and reserving to themselves all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the defendant, the Interstate Commerce Commission, for replication thereunto say that they do and will aver, maintain, and prove their said bill of complaint herein to be true, certain and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive, and insufficient in law to be replied unto by these replicants; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto and not herein and hereby well and sufficiently re-

391 plied unto, confessed or avoided, traversed or denied, is true, all of which matters and things these replicants are ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

WILLIAM D. MCHUGH,
Solicitor for Complainants.

(Endorsed:) Replication. Filed May 29th, 1908. Henry D. Lang, clerk.

And thereafter on the 1st of June the following appearance of L. A. Shaver was filed for defendant, viz:

392 *Circuit Court of the United States, District of Minnesota, Third Division.*

ALPHEUS B. STICKNEY ET AL.
vs.
INTERSTATE COMMERCE COMMISSION.
} Appearance. No. 877, Equity.

The clerk will enter my appearance for the defendant, the Interstate Commerce Commission, in the above-entitled cause.

L. A. SHAVER, *Solicitor.*

(Endorsed:) Appearance of L. A. Shaver for defendant. Filed June 1st, 1908. Henry D. Lang, clerk.

And on the same day the above appearance was entered of record on behalf of defendant, viz:

393 U. S. Circuit Court, District of Minnesota, Third Division. Chancery Rule and Order Book.

1908. June 1.

A. B. STICKNEY ET AL
vs.
THE INTERSTATE COMMERCE COMMISSION.
} Equity, No. 877.

This day comes the defendant by L. A. Shaver, solicitor, on whose motion it is hereby ordered that the appearance of said defendant be and the same is hereby entered.

Common Rule & Order Book "C," page 140.

Thereafter and on July 1st, 1908, the following receipt of Hon. Willis Van Devanter was filed in said cause, viz:

394 Hon. Walter H. Sanborn, St. Paul, Minn.
Hon. Willis Van Devanter, Cheyenne, Wy.
Hon. William C. Hook, Leavenworth, Kan.
Hon. Elmer B. Adams, St. Louis, Mo.
} Circuit Judges.
Hon. Wm. Lochren, Minneapolis, Minn.
Hon. Page Morris, Duluth, Minn.
} District Judges.

[United States Circuit Court, District of Minnesota. Henry D. Lang, clerk. Louise B. Trott, deputy.]

General terms:

First Tuesday in June and first Tuesday in December.
Rule day, first Monday in each month.

ST. PAUL, *May 11th, 1908.*

Hon. WILLIS VAN DEVANTER,
U. S. Circuit Judge, Cheyenne, Wy.

MY DEAR JUDGE: I hand you herewith a certified copy of certificate of the Attorney-General under the acts of February 11, 1903, and

June 29, 1906, filed to-day in case No. 877, equity, Alpheus B. Stickney et al. vs. Interstate Commerce Commission. Kindly acknowledge receipt thereof.

Sincerely, yours, HENRY D. LANG, *Clerk.*

Dictated.
Enc.

Received a copy of the above.

WILLIS VAN DEVANTER,
Circuit Judge.

(Endorsed:) Receipt of Hon. Willis Van Devanter for certified copy of Attorney-General's certificate. Filed July 1st, 1908. Henry D. Lang, clerk.

* * * * * * *

411 In the Circuit Court of the United States within and for the District of Minnesota, Third Division.

ALPHEUS B. STICKNEY AND CHARLES H. F. SMITH, receivers of The Chicago Great Western Railway Company; Chicago Great Western Railway Company; Chicago, Burlington & Quincy Railroad Company; Illinois Central Railroad Company; Chicago and Northwestern Railway Company; Chicago, Milwaukee and St. Paul Railway Company; The Chicago and Alton Railroad Company; The Chicago, Rock Island and Pacific Railway Company; and The Atchison, Topeka and Santa Fe Railway Company, complainants,

vs.

THE INTERSTATE COMMERCE COMMISSION, DEFENDANT. } In equity.

This cause came on to be heard at this term on a motion for a temporary restraining order and was argued by counsel, and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows: That the order made by the defendant, the Interstate Commerce Commission, heretofore, to wit, on December 10, 1907, in words and figures as follows: "It is ordered, that the defendants, the Chicago, Burlington & Quincy Railroad Company; Chicago Great Western Railway Company; Chicago & Northwestern Railway Company; Chicago, Milwaukee & St. Paul Railway Company; Chicago & Alton Railroad Company; Chicago, Rock Island & Pacific Railway Company; Atchison, Topeka & Santa Fe Railway Company, and Illinois Central Railroad Company, be, and they are hereby, required to cease and desist on or before the 1st day of
412 February, 1908, from exacting for the delivery of live stock at the Union Stock Yards, in Chicago, Ill., with respect to shipments of live stock transported by them from points outside of the

State, their present terminal charge of $2 per car. It is further ordered, that said defendants be, and they are hereby, notified and required to establish and put in force on or before the 1st day of February, 1908, and apply thereafter during a period of not less than two years, for the delivery of live stock at the Union Stock Yards, in said Chicago, with respect to shipments of live stock transported by them from points outside the State of Illinois, a terminal charge which shall not exceed $1 per car, if any terminal charge is maintained by them," and any subsequent order or orders extending the time for putting the foregoing order into force and effect and each and all thereof be and the same are hereby suspended and the enforcement of each and all thereof be and the same is hereby restrained and enjoined until the further order of this court. And it is further ordered, adjudged, and decreed that until the further order of this court each of the complainants in this action, make, keep, and maintain a constant and permanent record showing the number of cars of live stock brought from outside the State of Illinois and carried by them from the terminals of their own lines respectively over the tracks of the Union Stock Yards & Transit Company to the Union Stock Yards in the city of Chicago; the dates of such carriage, the names of the respective consignors and consignees of such live stock
413 and the charges made by the respective complainants for such terminal service and the charges prescribed therefor at the time such service was rendered by the Interstate Commerce Commission, and that said complainants and each of them hold the said record showing the facts above mentioned subject to the further orders of this court. It is further ordered that the complainants within twenty days after the filing of this order file with the clerk of this court a bond payable to the United States of America for the benefit of any person or persons damaged in the penal sum of $100,000.00 with surety or sureties to be approved by one of the judges of this court, or, in the absence of such judge from this district, by the clerk of this court, conditioned that they and each of them will comply with the orders made upon them in this decree and with the future order or orders which may be made upon them in the premises, and that they will pay any damages sustained by shippers of live stock over their respective railroads by reason of this injunction if the same shall hereafter be dissolved.

June 30, 1908.

WALTER H. SANBORN,
WILLIAM C. HOOK,
ELMER B. ADAMS,
United States Circuit Judges
for the Eighth Circuit.

(Endorsed:) Interlocutory decree ordering temporary injunction. Filed June 30th, 1908. Henry D. Lang, clerk.

414 Thereafter and on July 8th, 1908, the following interlocutory decree was filed with proof of service thereon, viz:

In the Circuit Court of the United States within and for the District of Minnesota, Third Division.

ALPHEUS B. STICKNEY AND CHARLES H. F. SMITH, receivers of The Chicago Great Western Railway Company; Chicago Great Western Railway Company; Chicago, Burlington & Quincy Railroad Company; Illinois Central Railroad Company; Chicago and Northwestern Railway Company; Chicago, Milwaukee and St. Paul Railway Company; The Chicago and Alton Railroad Company; The Chicago, Rock Island and Pacific Railway Company; and The Atchison, Topeka and Santa Fe Railway Company, complainants,

vs.

THE INTERSTATE COMMERCE COMMISSION, defendant.

In equity.

This cause came on to be heard at this term on a motion for a temporary restraining order and was argued by counsel, and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows: That the order made by the defendant, the Interstate Commerce Commission, heretofore, to-wit, on December 10, 1907, in words and figures as follows: "It is ordered that the defendants, the Chicago, Burlington & Quincy Railroad Company, Chicago Great Western Railway Company, Chicago & Northwestern Railway Company, Chicago, Milwaukee & St. Paul Railway Company, Chicago & Alton Railroad Company, Chicago, Rock Island & Pacific Railway Company, Atchison, Topeka & Santa Fe Railway Company, and Illinois Central Railroad Company, be, and they are hereby, required to cease and desist on or before the 1st day of February, 1908, from exacting for the delivery of live stock
415 at the Union Stock Yards, in Chicago, Ill., with respect to shipments of live stock transported by them from points outside of the State, their present terminal charge of $2 per car. It is further ordered, that said defendants be, and they are hereby, notified and required to establish and put in force on or before the 1st day of February, 1908, and apply thereafter during a period of not less than two years, for the delivery of live stock at the Union Stock Yards, in said Chicago, with respect to shipments of live stock transported by them from points outside the State of Illinois, a terminal charge which shall not exceed $1 per car, if any terminal charge is maintained by them," and any subsequent order or orders extending the time for putting the foregoing order into force and effect and each and all thereof be and the same are hereby suspended and the enforcement of each and all thereof be and the same is hereby restrained and enjoined until the further order of this court. And it is further ordered, adjudged, and decreed that until the further

order of this court each of the complainants in this action, make, keep, and maintain a constant and permanent record showing the number of cars of live stock brought from outside the State of Illinois and carried by them from the terminals of their own lines respectively over the tracks of the Union Stock Yards & Transit Company to the Union Stock Yards in the city of Chicago; the dates of such carriage, the names of the respective consignors and
416 consignees of such live stock, and the charges made by the respective complainants for such terminal service and the charges prescribed therefor at the time such service was rendered by the Interstate Commerce Commission, and that said complainants and each of them hold the said record showing the facts above mentioned subject to the further orders of this court. It is further ordered that the complainants within twenty days after the filing of this order file with the clerk of this court a bond payable to the United States of America for the benefit of any person or persons damaged in the penal sum of $100,000.00, with surety or sureties to be approved by one of the judges of this court, or in the absence of such judge from this district, by the clerk of this court, conditioned that they and each of them will comply with the orders made upon them in this decree and with the future order or orders which may be made upon them in the premises and that they will pay any damages sustained by shippers of live stock over their respective railroads by reason of this injunction if the same shall hereafter be dissolved.

June 30, 1908.

WALTER H. SANBORN,
WILLIAM C. HOOK,
ELMER B. ADAMS,
United States Circuit Judges for the Eighth Circuit.

(Endorsed:) Interlocutory decree ordering temporary injunction. Filed June 30th, 1908. Henry D. Lang, clerk.

417 UNITED STATES OF AMERICA.
District of Minnesota, Third Division, sct.

I, Henry D. Lang, clerk of the Circuit Court of the United States for the District of Minnesota, do hereby certify that I have carefully compared the foregoing paper writing with the original thereof, which is in my custody as such clerk, and that the said paper writing is a correct copy of such original and of the whole thereof, in the cause therein named.

Witness my hand as clerk, and the seal of said court. Done at my office in St. Paul, Minnesota, this 30th day of June, A. D. 1908.

[SEAL.] HENRY D. LANG, *Clerk.*

(Endorsed:) Served a certified copy of within order on Interstate Commerce Commission by service upon Martin A. Knapp, chairman, July 3, 1908.

AULICK PALMER,
U. S. Marshal District of Columbia.

Filed July 8th, 1908. Henry D. Lang, clerk.

Thereafter and on July 16th, 1908, the following assignment of errors was filed in said cause, viz:

418 In the Circuit Court of the United States within and for the District of Minnesota, Third Division.

ALPHEUS B. STICKNEY AND CHARLES H. F. SMITH, receivers of The Chicago Great Western Railway Company, Chicago Great Western Railway Company et al., complainants
vs.
INTERSTATE COMMERCE COMMISSION, DEFENDANT.

ASSIGNMENT OF ERRORS.

And now comes the Interstate Commerce Commission, by Chas. C. Houpt, district attorney of the United States for the District of Minnesota, and charges that in the order and decree rendered by said Circuit Court for said district in the above entitled cause on the thirtieth day of June, 1908, wherein and whereby said court suspended the order of the Interstate Commerce Commission as therein shown and restrained and enjoined the enforcement of the same, and in the record and proceedings therein there is manifest error to its injury, in this, to-wit:

1. Said Circuit Court erred in not dismissing the bill of complaint for want of equity.

2. Said court erred in not dismissing complainants' bill for want of jurisdiction.

3. Said court erred in not dismissing said bill because there is not set forth therein, or made a part thereof as an exhibit, the report and opinion of the commission giving the grounds upon which it based the order in question.

419 4. Said court erred in not dismissing said bill on the allegations and denials of the answer of the Interstate Commerce Commission.

5. Said court erred in not dismissing said bill because there is no allegations therein that irreparable injury will result from the failure to enjoin the enforcement of the order in question and no facts are alleged showing, or tending to show, that such injury will or can result therefrom.

6. Said court erred in holding that the action of the Interstate Commerce Commission in making the order in question was reviewable in the courts.

7. Said court erred in not dismissing the complainants' bill and in making the order suspending the order of the Interstate Commerce Commission and in restraining and enjoining the enforcement thereof, in the absence of any allegation or showing by complainants that the terminal charge of one ($1.00) dollars per car as prescribed by the commission in connection with the through rate on shipments of live stock to which it applied, deprived the complainants of property

without due process of law or constituted a taking of their property without just compensation.

8. Said court erred in not holding that the through rate from point of shipment of the live stock to the Chicago terminals of the carriers included full compensation for the carriage thereof on to the stock yards, and that the two ($2.00) dollars additional charge was,
420 whether considered as a segregated charge for the terminal service or an addition to the through rate, unwarranted and extortionate.

9. Said court erred in holding, in effect, that the Interstate Commerce Commission erred as a matter of law in considering the fact of the payment of the through rate in connection with the terminal charge, in determining the reasonableness of the terminal charge.

10. Said court erred in not holding that the fact that the carriers for 29 years prior to 1894, under their contracts to carry to Chicago, delivered carloads of cattle to the stock yards without making any charge other than that which was embraced in the through rate, raised the presumption that the through rate included adequate compensation for the services rendered to the point of delivery at the stock yards and that those services were not gratuitously performed.

11. Said court erred in holding, in effect, that the mere imposition by the stock yards company of a new burden in the shape of a trackage charge, averaging one ($1.00) dollar per car, justified an additional charge by the carriers of two ($2.00) dollars per car.

12. Said court erred in holding that it was conceded by the pleadings that the actual cost to complainants of carrying live stock from their respective terminal yards at the ends of their lines of roads in Chicago to the Union Stock Yards exceeds the sum of two ($2.00) dollars per car.

421 13. Said court erred in making said order suspending and enjoining the order of the Interstate Commerce Commission, in absence of any allegation or showing that the cost of the service of delivery of live stock from the end of the defendant's rails to the Union Stock Yards, independent of the cost of unloading, the cost of maintenance of delivering agencies at the Union Stock Yards, and independent of the costs of returning the empty cars was more than one (1.00) dollars per car.

14. Said court erred in holding, in effect, that, although the through rate from points of origin of live-stock shipments of the Chicago terminals of the carriers embraced a presumably adequate charge for the terminal service rendered in continuing the carriage of the live stock from those terminals to the stock yards, the carriers had the right to impose a distinct additional charge for such terminal service without subtracting from the said through rate the terminal charge embraced therein, and that the commission had no right to forbid such second or additional terminal charge.

15. Said court erred in not holding that said terminal charge in addition to a presumably adequate terminal charge already absorbed or embraced in the through rate, was extortionate and not justified

by the fact, if it be a fact, that said additional terminal charge was not in itself unreasonably high.

422 16. Said court erred in considering the one (1.00) dollars per car as the sole compensation for the terminal service and in holding in effect that the reasonableness in the same must be considered independent of the fact that in all cases where it is imposed there is also paid to the complainant carrier a through rate which the commission found in its report and opinion embraced compensation for delivery to the Union Stock Yards.

17. Said court erred in holding that the complainants had segregated the terminal service and terminal charge from the through service and through rate.

18. Said court erred in holding that it was required by the act to regulate commerce; that the charge for the terminal service should be separately scheduled, and on that account that the commission should have determined its reasonableness alone by the cost of the particular service independent of the payment of the through rate.

19. Said court erred in holding that the expenditure for trackage and other costs of making delivery at the Union Stock Yards is totally distinct and separate from that involved in the transportation of such live stock over their own lines to the end of their own rails.

20. Said court erred in holding, in effect, that the mere statement by the carriers in their tariffs that the second charge was a separate and distinct charge for the terminal service altered the fact

423 that, as found by the Supreme Court, that charge was "a mere addition to the sum of the terminal charge embraced in the prior through rate."

21. Said court erred in holding, in effect, that there could be a segregation of the terminal charge from the through rate without substracting from the through rate the terminal charge already embraced therein.

22. Said court erred in holding, in effect, that the Interstate Commerce Commission has no jurisdiction or authority to forbid a terminal charge although reasonable in itself, when an adequate terminal charge is already absorbed or embraced in the through rate.

23. Wherefore the Interstate Commerce Commission prays that the decree of said Circuit Court rendered on the 30th day of June, 1908, be reversed and that said Circuit Court be ordered to enter a decree, dismissing the petition or bill of complaint in the above-entitled cause by the said complainants against said Interstate Commerce Commission.

CHARLES C. HOUPT,
District Attorney for the United States
for the District of Minnesota.

(Endorsed:) Assignment of errors. Filed July 16th, 1908. Henry D. Lang, clerk.

Thereafter and on the same day the following petition for and order allowing appeal was filed and entered in said cause, viz:

424 In the Circuit Court of the United States within and for the District of Minnesota, Third Division.

ALPHEUS B. STICKNEY AND CHARLES H. F. SMITH, receivers of the Chicago Great Western Railway Company, Chicago Great Western Railway Company, complainants,
vs.
INTERSTATE COMMERCE COMMISSION, DEFENDANT.

PETITION FOR APPEAL.

The Interstate Commerce Commission, being a bureau or department of the Government of the United States, by Charles C. Houpt, district attorney of the United States for the district of Minnesota, being thereunto duly authorized, represents that in the decree or order of said circuit court in the above-stated case, rendered on the thirtieth day of June, 1908, there is manifest error in its injury; and, therefore, prays for an order granting an appeal from said decree to the Supreme Court of the United States.

CHARLES C. HOUPT,
District Attorney of the United States for the District of Minnesota.

425 In the Circuit Court of the United States within and for the District of Minnesota, Third Division.

ALPHEUS B. STICKNEY AND CHARLES H. F. SMITH, receivers of the Chicago Great Western Railway Company, Chicago Great Western Railway Company, et al., complainants,
vs.
INTERSTATE COMMERCE COMMISSION, DEFENDANT.

ORDER ALLOWING APPEAL.

In this cause, the Interstate Commerce Commission, by Chas. C. Houpt, district attorney of the United States for the district of Minnesota, thereunto duly authorized, having made its application in writing for an appeal from the decree therein, rendered on the thirtieth day of June, 1908, to the Supreme Court of the United States, and the said Interstate Commerce Commission, being a bureau or department of the Government of the United States, and it appearing that the matter in dispute in said cause exceeds the sum of $5,000, exclusive of costs, it is therefore, ordered that said appeal be and the same is, hereby granted and made returnable on the twenty-first day of September, 1908.

WALTER H. SANBORN,
Circuit Judge.

(Endorsed:) Petition and order allowing appeal. Filed July 16th, 1908. Henry D. Lang, clerk.

426 And thereafter on the same day the following Praecipe for return to U. S. Supreme Court was filed in said cause, viz:

Circuit Court of the United States, District of Minnesota, Third Division.

ALPHEUS B. STICKNEY, ET AL., *vs.* INTERSTATE COMMERCE COMMISSION.	Praecipe for return to Supreme Court of the United States upon appeal.

To the Clerk of the above named court:

Please prepare a return to the Supreme Court of the United States upon the appeal in the above entitled cause and include therein all the files and records.

CHAS. C. HOUPT,
District Attorney of the United States for the district of Minnesota.

Dated St. Paul, Minnesota, July 16th, A. D. 1908.

(Endorsed:) Praecipe for return to U. S. Supreme Court. Filed July 16th, 1908. Henry D. Lang, clerk.

Thereafter and on July 17th, 1908, the following original citation was filed in said cause with proof of service, viz:

427 In the circuit court of the United States within and for the district of Minnesota, third division.

ALPHEUS B. STICKNEY AND CHARLES H. F. Smith, receivers of the Chicago Great Western Railway Company, Chicago Great Western Railway Company, et al., complainants,
v.
INTERSTATE COMMERCE COMMISSION, DEFENDANT.

CITATION ON APPEAL.

The United States of America, eighth judicial circuit.

The President of the United States, to Alpheus B. Stickney and Charles H. F. Smith, receivers of the Chicago Great Western Railway Company, Chicago Great Western Railway Company et al., or to William D. McHugh, their solicitor of record, greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States at Washington, D. C., within 66 days from the date hereof, pursuant to the appeal sued out and filed in the clerk's office, in the United States Circuit Court for the

District of Minnesota, in the cause wherein the Interstate Commerce Commission was defendant and said Alpheus B. Stickney and Charles H. F. Smith, receivers of the Chicago Great Western Railway Company, Chicago Great Western Railway Company et al., were complainants, to show cause, if any there be, why the decree rendered against the said Interstate Commerce Commission, as
428 in said petition for appeal mentioned, should not be corrected and why speedy justice should not be done in that behalf.

Witness the Hon. Walter H. Sanborn, U. S. Circuit Judge for said Eighth Judicial Circuit, this the sixteenth day of July, in the year of our Lord, one thousand nine hundred and eight.

WALTER H. SANBORN,
Circuit Judge.

Due service of above citation is hereby confessed this 17th day of July, 1908.

WILLIAM D. MCHUGH,
Solicitor for Complainants.

429 (Indorsed:) Entered. No. 877 Eq. United States of America, district of Minnesota, circuit court, third division. A. B. Stickney et al., complainants vs. Interstate Commerce Commisision, defendant. Citation on appeal with proof of service. Filed July 17th, 1908. Henry D. Lang, clerk.

430 Thereafter and on July 18th, 1908, the following bond on appeal was filed in said cause, viz:

In the circuit court of the United States within and for the district of Minnesota, third division.

ALPHEUS B. STICKNEY AND CHARLES H. F. SMITH, RECEIVERS of the Chicago Great Western Railway Company, Chicago Great Western Railway Company, Chicago, Burlington & Quincy Railroad Company, Illinois Central Railroad Company, Chicago & Northwestern Railway Company, Chicago, Milwaukee & St. Paul Railway Company, The Chicago & Alton Railroad Company, The Chicago, Rock Island and Pacific Railway Company, and The Atchison, Topeka & Santa Fe Railway Company, complainants,
v.
THE INTERSTATE COMMERCE COMMISSION, DEFENDANT. } Bond.

Know all men by these presents that we, Alpheus B. Stickney and Charles H. F. Smith, receivers of the Chicago, Great Western Railway Company, Chicago Great Western Railway Company, Chicago, Burlington & Quincy Railroad Company, Illinois Central Railroad Company, Chicago & Northwestern Railway Company, Chicago, Milwaukee & St. Paul Railway Company, The Chicago & Alton Railroad Company, The Chicago, Rock Island and Pacific Railway Company, and The Atchison, Topeka & Santa Fe Railway

Company, as principals, and National Surety Company as surety, are held and firmly bound unto the United States of America in the penal sum of one hundred thousand dollars ($100,000.00) for the payment of which, well and truly to be made, we do hereby bind ourselves and our successors, jointly and severally, firmly by these presents.

Dated this 14th day of July, 1908.

431 The condition of the above obligation is such, that:

Whereas, on the 30th day of June, 1908, in the above-entitled cause pending in the above-entitled court, on application of the above-named complainants, an order was entered by said Circuit Court of the United States within and for the District of Minnesota, Third Division, in and by which order it was provided that the order made by the Interstate Commerce Commission in words and figures as follows:

"It is ordered, that the defendants, the Chicago, Burlington & Quincy Railroad Company, Chicago Great Western Railway Company, Chicago & Northwestern Railway Company, Chicago, Milwaukee & St. Paul Railway Company, Chicago & Alton Railroad Company, Chicago, Rock Island & Pacific Railway Company, Atchison, Topeka & Santa Fe Railway Company, and Illinois Central Railroad Company, be, and they are hereby, required to cease and desist on or before the 1st day of February, 1908, from exacting for the delivery of live stock at the Union Stock Yards in Chicago, Ill., with respect to shipments of live stock transported by them from points outside of that State, their present terminal charge of $2 per car. It is further ordered, that said defendants be, and they are hereby, notified and required to establish and put in force on or before the 1st day of February, 1908, and apply thereafter during a period of not less than two years, for the delivery of live stock at the Union Stock Yards, in said Chicago, with respect to shipments of live stock transported by them from points outside the
432 State of Illinois, a terminal charge which shall not exceed $1 per car, if any terminal charge is maintained by them," and any subsequent order or orders extending the time for putting the foregoing order into force and effect and each and all thereof were suspended, and the enforcement of each and all thereof was restrained and enjoined until the further order of said court; and in and by which said order it was further provided that until the further order of said court each of the complainants above named should make, keep, and maintain a constant and permanent record showing the number of cars of live stock brought from outside the State of Illinois and carried by them from the terminals of their own lines respectively, over the tracks of the Union Stock Yards & Transit Company to the Union Stock Yards in the city of Chicago, the dates of such carriage, the names of the respective consignors and consignees of such live stocks, and the charges made by the respective complainants for such terminal service and the charges

prescribed therefor, at the time each service was rendered, by the Interstate Commerce Commission, and that said complainants and each of them hold the said record showing the facts above mentioned, subject to the further orders of said court.

Now, therefore, if the said complainants comply with the orders made upon them in the said order and decree and comply with any future order or orders which may be made upon them in the premises, and will pay any damages sustained by shippers of live stock
433 over their respective railroads by reason of said injunction if the same shall hereafter be dissolved, then this obligation to be void; otherwise, to remain in full force and effect.

This bond is given pursuant to the said order, and is payable in accordance with the said order to the United States of America for the benefit of any person or persons who may be damaged as in said order provided.

In witness whereof the parties hereto have caused this instrument to be properly executed the day above written.

A. B. STICKNEY,
CHAS. H. F. SMITH,
Receivers of the Chicago Great Western Railway.

CHICAGO GREAT WESTERN RAILWAY COMPANY,
[SEAL.] By A. B. STICKNEY, *President.*

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY,
[SEAL.] By GEO. B. HARRIS, *President.*

ILLINOIS CENTRAL RAILROAD COMPANY,
[SEAL.] By I. G. RAWN, *Vice-President.*

CHICAGO & NORTHWESTERN RAILWAY COMPANY,
[SEAL.] By M. HUGHITT, *President.*

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY,
[SEAL.] By J. H. HILAND, *3d Vice-President.*

CHICAGO & ALTON RAILROAD COMPANY,
[SEAL.] By P. H. HULAHAN, *General Manager.*

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY,
[SEAL.] By B. F. WINCHELL, *President.*

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY,
[SEAL.] By W. B. JANSEN, *Fourth Vice-President.*

NATIONAL SURETY COMPANY,
A. L. FRASER, *Resident Vice-President.*
[SEAL.] H. L. BOHANNAN, *Resident Assistant Secretary.*

434 STATE OF ILLINOIS,
County of Cook, ss:

On this 14th day of July, A. D. 1908, before me appeared George B. Harris, I. G. Rawn, M. Hughitt, J. H. Hiland, P. H. Hulahan, B. F. Winchell, and W. B. Jansen, to me personally known, who, being duly sworn, did severally say that they are, respectively, the president of the Chicago, Burlington & Quincy Railroad Company, the vice-president of the Illinois Central Railroad Company, the president of the Chicago & Northwestern Railway Company, the third vice-president of the Chicago, Milwaukee & St. Paul Railway Company, the general manager of the Chicago & Alton Railroad Company, the president of the Chicago, Rock Island & Pacific Railway Company, and the fourth vice-president of the Atchison, Topeka & Santa Fe Railway Company; that the seals affixed to the foregoing instrument are the corporate seals of the corporations whose seals they purport to be, and that said instrument was executed in behalf of sad dcorporation by authority of its board of directors, and said George B. Harris, I. G. Rawn, M. Hughitt, J. H. Hiland, P. H. Hulahan, B. F. Winchell, and W. B. Jansen severally acknowledge said instrument to be the free acts and deeds of said corporations, respectively.

[NOTARIAL SEAL.] OVIDE LANGLOIS,
Notary Public, Cook County, Illinois.

My commission expires January 23rd, 1911.

435 NATIONAL SURETY COMPANY.

Certificate of appointment of resident vice-president.

Know all men by these presents that A. L. Fraser has been and is hereby appointed resident vice-president of the National Surety Company at Chicago, Ill., and as such resident vice-president has full power and authority to sign and execute on behalf of the company any and all bonds, and all bonds signed by him, when sealed and attested by the secretary, an assistant secretary, or a resident assistant secretary, shall be as valid and binding upon the company as if said bonds had been signed by the president and duly sealed and attested.

Said appointment is made under and by authority of a certain by-law adopted by the board of directors of said National Surety Company at a regular meeting duly called and held on the fourth day of February, 1908, a certified copy of which is hereto attached, and is subject to revocation as therein provided.

In testimony whereof the National Surety Company has caused these presents to be signed by its president, and its corporate seal to

be hereto affixed, duly attested by its asst. secretary, this 13th day of April A. D., 1908.

[SEAL.] WM. B. JOYCE, *President.*

Attest:

WM. I. HAWKS,
1st Vice Secretary.

436 STATE OF NEW YORK,
County and City of New York, ss:

On this 13th day of April, A. D. 1908, before me appears Wm. B Joyce, president of the National Surety Company, with whom I am personally acquainted, who, being by me duly sworn, says that he is president of the National Surety Company; that he knows the corporate seal of the company; that the seal affixed to the foregoing instrument is such corporate seal; that it was affixed by order of the board of directors of said company, and that he signed said instrument as president of said company, by like authority. That said Wm. B. Joyce further says that he is acquainted with Wm. I. Hawks, and knows him to be the asst. secretary of said company; that the signature of said Wm. I. Hawks, subscribed to the said instrument, is the genuine handwriting of the said Wm. I. Hawks, and was thereto subscribed by like order of the said board of directors.

[SEAL.] JERROLD SMULLEN,
Notary Public No. 369 for County of New York.

Certificate filed in Kings, Queens, Richmond, and Westchester counties.

437 *Copy of by-law.*

Be it remembered that at a meeting of the board of directors of the National Surety Company, duly called and held on the fourth day of February, 1908, a quorum being present, the following by-law was adopted:

"Article XII, section 1. The president or first vice-president may from time to time appoint resident vice-presidents, resident assistant secretaries, and attorneys in fact to represent and act for and on behalf of the company; and either the president, first vice-president, the board of directors, or the executive committee may at any time remove any such resident vice-president, resident assistant secretary, or attorney in fact, and revoke the power and authority given him.

"Sec. 2. Resident vice-presidents. Resident vice-presidents shall have power and authority to sign and execute on behalf of the company any and all bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature thereof, and to bind the company thereby as fully and to the same extent as the president could bind it."

STATE OF NEW YORK,
City and County of New York, ss:

I, Wm. I. Hawks, asst. secretary of the National Surety Company, do hereby certify that the above and foregoing is a full, true and cor-

POOR COPY

rect copy of a by-law adopted by the board of directors of said company at a meeting held on the fourth day of February,
438 1908, as the same appears upon the records of the company now in my possession and custody as asst. secretary.

In witness whereof I have hereunto set my hand and affixed the seal of said company, at the city of New York, this 13th day of April, A. D. 1908.

[SEAL.] WM. I. HAWKS, *Asst. Secretary.*

STATE OF NEW YORK,
City and County of New York, ss:

I, Wm. I. Hawks, asst. secretary of the National Surety Company, of New York, do hereby certify that the above and foregoing is a full, true, and correct copy of an instrument executed by said National Surety Company on the 13th day of April, evidencing the appointment of A. L. Fraser as resident vice-president of said company at Chicago, Illinois, and the power and authority upon him conferred by said company.

In witness whereof I have hereunto set my hand and affixed the seal of said company at the city of New York this 4th day of June, 1908.

[SEAL.] WM. I. HAWKS, *Asst. Secretary.*

439 NATIONAL SURETY COMPANY.

Certificate of appointment of resident assistant secretary.

Know all men by these presents that H. L. Bohannan has been and is hereby appointed resident assistant secretary of the National Surety Company, at Chicago, Ill., and as such resident assistant secretary has power and authority to seal and attest on behalf of the company any and all bonds, and all bonds sealed and attested by him, when signed by the president, vice-president, second vice-president, or a resident vice-president, shall be as valid and binding upon the company as if said bonds had been sealed and attested by the secretary.

Said appointment is made under and by authority of a certain by-law adopted by the board of directors of said National Surety Company at a regular meeting duly called and held on the sixth day of February, 1900, a certified copy of which is hereto attached and is subject to revocation as therein provided.

In testimony whereof the National Surety Company has caused these presents to be signed by its vice-president, and its corporate seal to be hereto affixed, duly attested by its asst. secretary, this 5th day of July A. D. 1906.

[SEAL.] WILLIAM J. GRIFFIN,
Vice President.

Attest:
GILBERT CONGDON,
Asst. Secretary.

440 STATE OF NEW YORK,
County and city of New York, ss.

On this 5th day of July A. D. 1906 before me appears William J. Griffin, asst. president of the National Surety Company, with whom I am personally acquainted, who, being by me duly sworn, says that he is vice-president of the National Surety Company; that he knows the corporate seal of the company; that the seal affixed to the foregoing instrument is such corporate seal; that it was affixed by the order of the board of directors of said company, and that he signed said instrument as vice-president of said company, by like authority. The said William J. Griffin further says that he is acquainted with Gilbert Congdon and knows him to be the asst. secretary of said company; that the signature of said Gilbert Congdon subscribed to the said instrument, is in the genuine handwriting of the said Gilbert Congdon and was thereto subscribed by like order of the said board of directors.

[SEAL.] B. W. MYERS.
Notary Public No. 85 for Kings County.

Certificate filed in New York, Queens, and Westchester counties.

441 *Copy of by-law.*

Be it remembered that at a meeting of the board of directors of the National Surety Company, duly called and held on the sixth day of February, 1900, a quorum being present, the following by-law was adopted:

"Article XII, section 1. The president, vice-president, or second vice-president may from time to time appoint resident vice-presidents, resident assistant secretaries, and attorneys in fact, to represent and act for and on behalf of the company; and either the president, vice-president, second vice-president, the board of directors, or the executive committee may, at any time, remove any such resident vice-president, resident assistant secretary, or attorney in fact, and revoke the power and authority given him.

"Sec. 3. Resident Assistant Secretaries. Resident assistant secretaries shall have power and authority to affix the seal of the company to, and attest, on behalf of the company, any and all bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature thereof, and to bind the company thereby as fully and to the same extent as the secretary could bind it."

STATE OF NEW YORK,
County and City of New York, ss.

I, Gilbert Congdon asst. secretary of the National Surety Company, do hereby certify that the above and foregoing is a full, true, and correct copy of a by-law adopted by the board of directors of said company, at a meeting held on the sixth day of Feb-
442 ruary, 1900, as the same appears upon the records of the company now in my possession and custody as asst. secretary.

In witness whereof I have hereunto set my hand and affixed the seal of said company at the city of New York, this 5th day of July, A. D. 1906.

[SEAL.] GILBERT CONGDON,
Asst. Secretary.

STATE OF NEW YORK,
City and County of New York, ss.

I, Wm. I. Hawks, asst. secretary of the National Surety Company, of New York, do hereby certify that the above and foregoing is a full, true, and correct copy of an instrument executed by said National Surety Company on the 5th day of July, evidencing the appointment of H. L. Bohannan as resident assistant secretary of said company at Chicago, Ill., and the power and authority upon him conferred by said company.

In witness whereof I have hereunto set my hand and affixed the seal of said company at the city of New York this 7th day of April, 1908.

[SEAL.] WM. I. HAWKS,
Asst. Secretary.

The within bond and the surety thereon are hereby approved.

WALTER H. SANBORN,
U. S. Circuit Judge.

ST. PAUL, *July 18, 1908.*

443 (Endorsed:) Bond of complainants on temporary injunction for $100,000.00. Filed July 18th, 1908. Henry D. Lang, clerk.

444 UNITED STATES OF AMERICA.

Circuit Court of the United States, District of Minnesota. Third Division.

I, Henry D. Lang, clerk of said Circuit Court, do hereby certify and return to the honorable the Supreme Court of the United States, that the foregoing, consisting of 444 pages, numbered from 1 to 444 inclusive, is a true and complete transcript of the records, process, pleadings, orders, decree, and all other proceedings in said cause and of the whose thereof, as appears from the original records and files of said court; and I do further certify and return, that I have annexed to said transcript, and included within said paging, the original citation, together with the proof of service thereof.

In witness whereof I have hereunto set my hand, and affixed the seal of said court, at Saint Paul, in the District of Minnesota, this 31st day of August A. D. 1908.

[SEAL.] HENRY D. LANG, *Clerk.*

445 Circuit Court of the United States, District of Minnesota, Third Division.

ALPHEUS B. STICKNEY ET AL. *vs.* THE INTERSTATE COMMERCE COMMISSION.	Præcipe for supplemental return to U. S. Supreme Court.

To the clerk of the above named court:

Please make a supplemental return upon the appeal in the above entitled cause and include therein all the records and proceedings in said cause subsequent to the transcript upon said appeal heretofore made.

CHAS. C. HOUPT,
U. S. District Attorney.

(Indorsed:) United States Circuit Court, District of Minnesota, 3rd Division. A. B. Stickney et al. *vs.* The Interstate Commerce Commission. Præcipe for supplemental return to U. S. Supreme Court. Filed October 27th, 1908. Henry D. Lang, clerk.

446 United States Circuit Court for the District of Minnesota. Term minutes, June term, A. D. 1908. October 26th, 1908.

Monday morning. Court opened pursuant to adjournment.

Present: Hon. Walter H. Sanborn, Hon. Willis Van Devanter, circuit judges. Henry D. Lang, clerk.

ALPHEUS B. STICKNEY AND CHARLES H. F. Smith, receivers of the Chicago Great Western Railway Company, Chicago Great Western Railway Company, Chicago, Burlington & Quincy Railroad Company, Chicago & Northwestern Railway Company, Chicago, Milwaukee & St. Paul Railway Company, The Chicago & Alton Railroad Company, The Chicago, Rock Island & Pacific Railway Company, and The Atchison, Topeka & Santa Fe Railway Company.	No. 877, equity.
vs.	
THE INTERSTATE COMMERCE COMMISSION.	

It is by the court ordered, that the following paragraphs on page 10 of the opinion, which are hereto attached, marked "Exhibit A," be withdrawn, and that in place of them the following paragraphs, marked "Exhibit B," be inserted, to wit.

"EXHIBIT A.

"The defendant is a legislative commission empowered to discharge certain duties of a judicial character; among others to determine and prescribe what are just and reasonable rates for carriers of inter-

state commerce to charge for the different kinds of service which they are authorized to perform for the public; that is, to determine and prescribe what may be the maximum of their charges for through transportation, terminal storage, iceing, and other services incidental to transportation which they print or publish in their schedules to be performed by them.

"Being a commission of the character just represented, we perceive no reason why the courts may not at least treat its proceedings as they do the acts and proceedings of other quasi-judicial bodies, created to perform executive or legislative acts involving inquiry into facts and application of law thereto. The finding of facts on controverted and conflicting evidence by such bodies, when not brought about by fraud or mistake, is generally conclusive and ought not to be disturbed by the courts; but when facts found, conceded, or established without dispute admit of but one legal conclusion, and a different and erroneous one is reached by reason solely of a misconception and misapplication of law by such bodies, their action is subject to review, and may and ought to be avoided by the courts. (James v. Germania Iron Co., 46 C. C. A. 476; 107 Fed. 596; Johnson v. Towsley, 13 Wal. 72; Moore v. Robbins, 96 U. S. 530.)"

447 EXHIBIT B.

The defendant is a legislative commission empowered to discharge certain legislative duties; among others, to determine and prescribe what are just and reasonable rates for carriers of interstate commerce to charge for the different kinds of service which they are authorized to perform for the public; that is, to determine and prescribe what may be the maximum of their charges for through transportation, terminal storage, iceing, and other services incidental to transportation which they print or publish in their schedules to be performed by them.

Being a commission of the character mentioned, we at least perceive no reason for giving its proceedings and conclusions greater efficacy than is accorded to those of quasi-judicial bodies, created to perform duties involving inquiry into facts and application of law thereto. The finding of facts on controverted and conflicting evidence by such bodies, when not brought about by fraud or mistake, is generally conclusive and ought not to be disturbed by the courts; but when facts found, conceded, or established without dispute admit of but one legal conclusion, and a different and erroneous one is reached by reason of a misconception and misapplication of law by such bodies, their action is subject to review, and may and ought to be avoided by the courts. (James v. Germania Iron Co., 46 C. C. A. 476, 107 Fed. 596; Johnson v. Towsley, 13 Wal. 72; Moore v. Robbins, 96 U. S. 530.)

A true record.

Attest: HENRY D. LANG, *Clerk.*

448 In the Circuit Court of the United States within and for the District of Minnesota, Third Division.

ALPHEUS B. STICKNEY AND CHARLES H. F. SMITH, receivers of the Chicago Great Western Railway Company, Chicago Great Western Railway Company, Chicago, Burlington & Quincy Railroad Company, Chicago & Northwestern Railway Company, Chicago, Milwaukee & St. Paul Railway Company, The Chicago & Alton Railroad Company, The Chicago, Rock Island & Pacific Railway Company, and The Atchison, Topeka & Santa Fe Railway Company, complainants,
vs.
THE INTERSTATE COMMERCE COMMISSION, DEFENDANT. } In equity.

Mr. William D. McHugh for complainants.
Mr. L. A. Shaver and Mr. Samuel H. Cowan for defendant.
Before Sanborn, Hook and Adams, circuit judges.

449 ADAMS, Circuit Judge, delivered the opinion of the court.

This is a bill in equity brought by the railroad companies, which are complainants, against the Interstate Commerce Commission to enjoin the enforcement of an order made by the latter requiring them to desist from charging two dollars per car for transporting live stock brought from outside the State of Illinois, from the ends of their roads in Chicago to the Union Stock Yards, and not to exact for that service hereafter a greater sum than one dollar per car. The present submission is on a motion for a temporay injunction based on the bill, answer filed thereto, and exhibits filed with both, to restrain the enforcement of that order or to suspend its operation until a final hearing can be had on the merits. The case is brought on for hearing before three circuit judges by virtue of a certificate of the Attorney-General made pursuant to the provisions of sec. 16 of the amended interstate commerce act (34 Stat., part 1, 584) and the act of February 11, 1903 (32 Stat., part 1, 823).

The pleadings and exhibits disclose that since the year 1894 the Interstate Commerce Commission has frequently had the question of the above mentioned terminal charge before it and has repeatedly ordered its reduction from two dollars per car to one dollar per car. Under the original interstate commerce act of 1887 (24 Stat., 379), the orders of the commission were not self-executing, but required compulsory orders to that effect by a court of competent jurisdiction. Upon the railroads declining to obey the first order to reduce the charge the commission instituted a proceeding in the Circuit Court of the United States for the Northern District of Illinois to secure its enforcement. The trial court decided in favor of the commission but its judgment was reversed on appeal by the Circuit Court
450 of Appeals for the Seventh Circuit. (Walker v. Keenan, 19

C. C. A., 668, 73 Fed., 755.) Afterwards, upon a new case made the commission again entered an order reducing the terminal charge from two dollars to one dollar and again sought its enforcement in the Circuit Court. Both the Circuit Court and the Circuit Court of Appeals for the Seventh Circuit decided against the commission and refused to enforce it. (Interstate Commerce Commission v. Chicago, B. & Q. R. Co., 43 C. C. A., 209, 103 Fed., 249.) Upon an appeal from the judgment of the Court of Appeals in the last mentioned case the Supreme Court of the United States, in 1902, affirmed its judgment. (Inter. Com. Commis'n v. Chicago, &c. R'd Co. 186 U. S., 320.)

In February, 1903, the Cattle Raisers' Association of Texas and the Chicago Live Stock Exchange filed a petition asking the commission to open up the case again to enable them to conform to certain observations made by the Supreme Court. This was done, and resulted in a third order by the commission requiring the railroads to desist from exacting the terminal charge of two dollars. This decision was rendered in August, 1905. Nothing further seems to have been done until December 3, 1906, when after the passage of the amendment to the interstate commerce act, approved June 29, 1906 (34 Stat., 584, part 1), known as the Hepburn Act, the Cattle Raisers' Association of Texas and the Chicago Live Stock Exhange again complained to the commission that the complaining railroad companies had violated the provisions of the interstate commerce acts in laying the charge of two dollars per car for the terminal service in question in Chicago. We suppose this additional proceeding was inspired by the Hepburn Act, which made the orders of the commission conclusive, subject only to a court review as provided for by the fifteenth and sixteenth sections of the interstate commerce act as
451 amended. On October 21, 1907, the commission again decided that the terminal charge of two dollars per car was unjust and unreasonable, and thereafter, to wit, on December 10, 1907, made an order that such charge should not exceed one dollar per car, and fixed February 1, 1905, as the date when the order should go into effect. Under the new law (34 Stat., 584, part 1, secs. 15 and 16) this order became effective proprio vigore at the time fixed by the commission therefor, and required obedience under heavy penalties unless upon review by the courts at the instance of the railroads it should be enjoined, set aside, annulled, or suspended.

Availing themselves of the right accorded by the act the railroad companies now appeal to this court for relief against that last order.

In view of protracted history of this case we find it unnecesary to restate many of the facts. By referring to the opinions of the courts already cited, and particularly to that of the Supreme Court of the United States in Inter. Com. Coms'n v. Chicago, &c., R'd Co. (supra), all essential detail can be found. For our present purposes it is sufficient to say that it stands conceded by the pleadings that the actual cost to complainants of carrying live stock from their respective terminal yards at the ends of their lines or roads in Chicago

to the Union Stock Yards exceeds the sum of two dollars per car. This expenditure is for trackage from the ends of their rails over the track of the Union Stock Yards & Transit Company and making deliveries of the stock at the stock yards, and is for a service totally distinct and separate from that involved in the transportation over their own lines to the ends of their rails. As such terminal service it was required by the original interstate commerce act (24 Stat., 379, sec. 6), and by the amended act of June 29, 1906 (34 Stat., 584,
452 part 1, sec. 6), that it should be separately scheduled by the carriers. The original act provided that the published schedules of rates, fares, and charges "shall also state separately the terminal charges," and the amended act emphasized this requirement by the use of the following language: "The schedules printed as aforesaid by any such common carrier shall plainly state the places between which property and passengers shall be carried, and shall contain the classification of freight in force, and shall also state separately all terminal charges, storage charges, icing charges, and all other charges which the commission may require, all privileges or facilities granted or allowed, and any rules or regulations which in anywise change, affect, or determine any part or the aggregate of such aforesaid rates, fares, and charges or the values of the service rendered the passenger, shipper, or consignee."

Prior to 1894 the railroad companies made no additional charge for transporting live stock from their own terminals in the city of Chicago and delivering the same to the Union Stock Yards. The rate fixed and charged for transportation from the points of origin of the freight to the ends of their own rails in Chicago included all the compensation they received for the service of delivery at the Stock Yards, but in that year the Union Stock Yard & Transit Company made a trackage charge for the use of its tracks for that service ranging from eighty cents to one dollar and fifty cents per car, according to the extent of the track used by the different roads respectively. This additional burden and the enhanced complexity and general cost of the special service according to the averments of the bill "made it impracticable to continue to make deliveries beyond the lines of their respective railroad tracks without any charge or
453 compensation therefor." For these reasons, as averred, the railroad companies laid a charge for it of one uniform price of two dollars per car and undertook to conform their published schedule of rates and charges thereto. This was the condition of things as the case stood when heard by the Court of Appeals for the Seventh Circuit and the Supreme Court. The Court of Appeals twice justified the imposition of the extra charge on the ground generally speaking, that the carriers had a right to segregate the terminal charge in question from the other rates over their main lines and had done so and that they had a right to make an additional charge not exceeding the cost thereof for that service and that the charge of two dollars a car as laid was just and reasonable and should be sustained. See cases supra.

The Supreme Court held that the carriers had the right to divide their rates so as to make a distinct charge for service from the point of shipment to Chicago and a separate charge for service in transporting and delivering live stock from their own terminals to the Union Stock Yards, but held that they had not made such a division by any such clear and plain statement as is required by the interstate commerce law. After referring to the provision of law requiring the separate statement of terminal charges the court said: "The purpose of this provision was to compel the schedules to be so drawn as to plainly inform of their import, was to exact that when the rates were changed the change should be so stated as not to mislead and confuse." The conclusion reached was that the carriers in this case had not made the required division and separate statement of their terminal charges; that all they had done was to add the sum of two dollars to the prior through rate, which up to that time had embraced the terminal charge. Mr. Justice White, speaking for the court
454 said: "We think that it cannot be said that to add an additional amount to a former charge was necessarily to divide such former charge without holding that to add one sum to another is necessarily to divide the other." Notwithstanding this conclusion the judgment of the Court of Appeals was affirmed on other grounds. The opinion concludes as follows: "We think, however, in view of what has been said, and in order to prevent all possible misconception, that it should be stated that nothing in the decree refusing to execute the order of the commission should be construed as preventing that body, if it deems it best to do so, from hereafter commencing proceedings to correct any unreasonableness in the rate resulting from the additional terminal charge as to any territory to which the reduction referred to in the opinion, if any such there be, did not apply."

Adopting the suggestion of the Supreme Court the carriers soon thereafter made an amendment of their published and filed schedules and by clear and unequivocal language segregated the terminal service from the transportation over their main lines to Chicago, and definitely fixed the rate for the separated terminal service at two dollars per car.

In view of the right and duty of the carriers to make a segregation and of the fact that one has been actually made and of the further fact that the charge laid for the separate terminal service is in itself just and reasonable, not more than the actual cost thereof, it would seem to follow that it should not be reduced. Neither the commission in its reports nor learned counsel in their argument attempt to justify the reduction on the ground that the charge as actually laid was too much for the particular service rendered, but solely on the ground that if the charge of two dollars a car for the terminal service should be allowed, even though it be only
455 a just and reasonable compensation therefor, the result would be that the rate from the origin of shipment to the ends of the rails in Chicago would become too high, and thereby the cost of trans-

portation from the origin of shipments to the Union Stock Yards would be excessive.

It is said that the carriers for many years before 1894 made no separate charge for the terminal service in question, but absorbed it in the through rate and that the present published and filed rate for the service on the main lines only, that is, the service to the end of complainants' lines in Chicago, excluding the terminal service, is the same as it then was. The conclusion drawn is that because the carriers are now charging two dollars more than they once admitted was just and reasonable for the entire transportation, including the terminal service, the imposition of the terminal charge is a mere unwarranted addition to a just and reasonable charge and is accordingly in itself unjust and unreasonable.

The logic of this argument is somewhat impaired by the concession that the carriers may by reason of the trackage charge ranging from eighty cents to one dollar and fifty cents per car made by the Union Stock Yard & Transit Company, add to the through rate the arbitrary sum of one dollar per car for a terminal charge. If the old through rate is not conclusive of the reasonableness of the terminal charge it is obviously left open to every consideration affecting its reasonableness; not only the trackage charge but the other facts which create the complexity and affect the general cost of the terminal service referred to in the bill should be considered.

The interstate commerce law confers the power upon carriers to determine for themselves the rate of freight between points on
456 their lines and the terminal and other charges which they will make for services beyond their lines incident to transportation and imposes upon them the duty of stating them separately in their schedules which are required to be published for the information of patrons. Carriers may in this manner make such propositions for business as they please, but when they make them they must, until they are changed by themselves or by the commission, strictly observe them or suffer the pains and penalties of the law for disobedience. In the exercise of their power and obedient to their legal duty the carriers fixed and published the terminal charge in question, for service beyond their lines rendered necessary to complete the transportation undertaken by them. They made this a separate matter as they had the undoubted right under the law to do, and, in our opinion, neither the commission nor the courts have a right to complicate it with any other service in determining the reasonableness of a charge fixed for it.

The various provisions of the interstate commerce law requiring separate statements and schedules of all kinds of service and imposing penalties for failure to observe them seems to us to necessarily place them apart and make each stand by itself when assailed as unlawful. This, of course, does not prevent consideration of all pertinent surrounding circumstances when any particular service is drawn in question.

It follows, we think, that the reduction of the terminal charge below its cost or below its just and reasonable value for the purpose of correcting the through rate was erroneous. The commission, in our opinion, had no power after the legal separation of the two services to make the terminal charge unreasonably low merely because the tariff for the through rate was unreasonably high. If the latter were true the remedy was to reduce it by a direct pro-
457 ceeding instituted for that purpose rather than by the indirection involved in reducing the charge for another connecting but separate service which was just and reasonable in itself. On the conceded facts of this case we think the commission misconstrued the law.

But it is argued that the power to prescribe maximum rates for service is conferred upon the commission exclusively; that when in its opinion an existing rate is unreasonable the power to prescribe a maximum rate for two years to come arises, and whether the opinion reached by the commission be right or wrong, that it is not under any circumstances reviewable by the courts.

With this contention we find ourselves unable to agree.

As a result of the well remembered protracted and able debates in Congress when the Hepburn bill was under consideration, concerning the question of a judicial review of the work of the commission, the following provisions were embodied in the act:

"Sec. 15. All orders of the commission except orders for the payment of money shall take effect within such reasonable time not less than thirty days, and shall continue in force for such period of time not exceeding two years, as shall be prescribed in the order of the commission, unless the same shall be suspended or modified or set aside by a court of competent jurisdiction.

"Sec. 16. The venue of suits brought in any of the courts of the United States against the commission to enjoin, set aside, annul or suspend any order or requirement of the commission shall be in the district," etc., * * * "and jurisdiction to hear and determine such suits is hereby vested in such courts," * * * * "pro-
458 vided that no injunction, interlocutory order or decree suspending or restraining the enforcement of an order of the commission shall be granted except on hearing after not less than five (5) days' notice to the commission."

The defendant is a legislative commission empowered to discharge certain legislative duties, among others, to determine and prescribe what are just and reasonable rates for carriers of interstate commerce to charge for the different kinds of service which they are authorized to perform for the public; that is, to determine and prescribe what may be the maximum of their charges for through transportation, terminal storage, icing and other services incidental to transportation which they print or publish in their schedules to be performed by them.

Being a commission of the character mentioned we at least perceive no reason for giving its proceedings and conclusions greater

efficacy than is accorded to those of quasi judicial bodies, created to perform duties involving inquiry into facts and application of law thereto. The finding of facts on controverted and conflicting evidence by such bodies when not brought about by fraud or mistake is generally conclusive and ought not to be disturbed by the courts; but when facts found, conceded or established without dispute admit of but one legal conclusion and a different and erroneous one is reached by reason of a misconception and misapplication of law by such bodies, their action is subject to review and may and ought to be avoided by the courts. (James v. Germania Iron Co., 46 C. C. A., 476; 107 Fed., 596; Johnson v. Towsley, 13 Wal., 72; Moore v. Robbins, 96 U. S., 530.)

We refrain from expressing any opinion concerning what other jurisdiction, if any, is conferred upon this court by the broad
459 and comprehensive language of the Hepburn Act authorizing it "to enjoin, set aside, annul or suspend any order or requirement of the commission." All we are required now to hold and all we do hold is that this court has ample jurisdiction to set aside or suspend any order of the commission resulting from a misconception and misapplication of a law to conceded or undisputed facts.

Applying the foregoing doctrine to the facts of this case we think the learned commission fell into a mistake of law in attempting to correct the through rate by reducing the terminal charge itself below its just and reasonable value. That being a separable and separate service, actually segregated by proper action of the carriers from the rate over their main lines, it must, in our opinion, stand or fall upon its own merits, irrespective of whether the other rates are in themselves just and reasonable. If they are not just and reasonable, appropriate proceedings should be instituted to make them so. Such, we think, is the meaning of the Supreme Court expressed in the latter part of its opinion in Int. Com. Comm. v. Chicago, etc., R. Co. (supra). It there reserved the right to the commission "to commence proceedings to correct any unreasonableness in the rate resulting from the additional terminal charge," etc. If by the separation of and separate charge for the terminal service the balance of the rate from the origin of shipment to the Stock Yards is in the light of former charges or for any other reason too high, the remedy should be applied directly to it without disturbing the rate, which is not too high.

Counsel for the commission again suggest rather than seriously argue, we think, that no rate prescribed by the commission for any service can be set aside or suspended unless the complaining carriers make it appear that the enforcement of the rate challenged will render the business of the carriers throughout their whole line un-
460 profitable. Our attention is called to the case of St. L. & San Francisco Railway v. Gill, 156 U. S., 649, as authority for this suggestion. Without stopping to analyze the Gill case to show its inapplicability to the case before us or to consider the proposition advanced by counsel at any length, we content ourselves by saying

that it seems utterly untenable. The provision of the interstate commerce law requiring carriers to segregate certain incidental services rendered by them from the principal service of transporting merchandise over the main lines of their roads and requiring them to affix thereto a distinct and separate charge which in itself must be just and reasonable is inconsistent with counsel's suggestion. We can not conceive that Congress ever intended by the legislation in question to subject railroad companies to the necessity of an accounting concerning all their business throughout their entire lines in order to securing proper compensation for an icing, elevating, or terminal service. An intention involving such an impracticable result should not be lightly imputed to Congress.

Some other arguments are made in support of the contentions of each side, all of which have received careful consideration, but as the result reached by us necessarily follows from what has already been said, we refrain from prolonging this discussion further. The temporary injunction prayed for, suspending until the further order of this court the order of the commission reducing the terminal charge in question from two dollars to one dollar, will be made; but we will require as a protection to shippers that the several complainants keep an accurate record showing the number of cars of live stock transported by them respectively over the terminal road in question to the Union Stock Yards, together with the dates of such transportation, the names of the respective consignors
461 and consignees, the charges made by the respective complainants for such terminal service and other charges prescribed therefor at the time such service may be rendered by the Interstate Commerce Commission, and hold the same subject to such orders as this court may hereafter make with respect thereto. We shall also require that complainants furnish a bond in the penal sum of $100,000.00 conditioned that they will comply with the orders made upon them and pay such damages as shippers may sustain by reason of the injunction.

(Endorsed:) Decision on motion for temporary injunction. Filed June 30th, 1908. Henry D. Lang, clerk.

462–6 UNITED STATES OF AMERICA.

Circuit Court of the United States, District of Minnesota, Third Division.

I, Henry D. Lang, clerk of said Circuit Court, do hereby certify and return to the honorable, the Supreme Court of the United States, that the foregoing, consisting of 17 pages, numbered from 1 to 17 inclusive, is a true and complete transcript of all the records and proceedings in said cause, subsequent to the transcript upon appeal heretofore transmitted to the Supreme Court of the United States and of the whole thereof, as appears from the original records and

files of said court, and that this transcript is and constitutes a supplemental return upon the appeal in said cause.

In witness whereof, I have hereunto set my hand, and affixed the seal of said court, at Saint Paul, in the District of Minnesota, this 27th day of October, A. D. 1908.

[SEAL.] HENRY D. LANG, *Clerk*.

467 (Indorsed:) United States Circuit Court, District of Minnesota, 3rd Division. A. B. Stickeny et al., *vs.* The Interstate Commerce Commission, defendant. Supplemental Return upon Appeal to the U. S. Supreme Court. Office of the clerk Supreme Court U. S. Received Oct. 29, 1908.

468 In the Supreme Court of the United States, October term 1908.

THE INTERSTATE COMMERCE COMMISSION, APPELLANT,
v.
A. B. STICKNEY, ET AL., APPELLEES. } No. 533.

STIPULATION.

It is hereby agreed by counsel for the respective parties in the above entitled cause that the corrected copy of the opinion of the Circuit Court of the United States for the District of Minnesota in this cause be substituted for and printed in the place of the opinion embodied in the transcript of record.

HENRY M. HOYT,
Solicitor-General.

L. A. SHAVER,
Solicitor for Appellant.

W. D. MCHUGH,
Solicitor for Appellees.

469 (Indorsed:) File No. 21329. Supreme Court U. S., October term, 1908. Term No. 533. The Interstate Commerce Commission, app't, *vs.* A. B. Stickney et al., receivers, &c., et al. Stipulation to substitute corrected copy of opinion of Circuit Court for the copy sent up with transcript of record & copy of corrected opinion. Filed Nov. 19th, 1908.

470 In the Supreme Court of the United States, October Term, 1908.

INTERSTATE COMMERCE COMMISSION, APPELLANT,
v.
A. B. STICKNEY ET AL., APPELLEES. } No. 533.

STIPULATION.

It is hereby stipulated and agreed by and between the parties that the exhibits attached to the record herein need not be printed in full

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in the record, each party having the right, however, to refer thereto with the permission of the court.

In order to avoid the printing of said exhibits, it is hereby stipulated that the freight tariff of the Chicago & Alton Railroad Company attached as an exhibit to the affidavit of Walter L. Ross is on its face a freight tariff applying on live stock in carloads between stations outside of Illinois, and among other places, "Brighton Park (Chicago) Ill.," and that in said tariff there is the following provision:

"Application of rates.

"Shipments to and from the Union Stock Yards district, Chicago.

"Shipments consigned to or received from Union Stock Yards, Chicago, Ill., or industries located on the tracks of the Union Stock Yards R'y, will, in addition to the rates named in this tariff, be subject to a delivery charge of $2.00 per car, and $1.50 per car on shipments received from or delivered to the Northern Indiana R. R. at Hammond, Ind.

"Agents must insert the above charge in all shipping receipts, bills of lading, waybills, and stubs; or live stock contracts for shipment consigned to or coming from industries specified, showing same as a separate item in addition to the tariff rate to or from Brighton Park."

That the freight tariff of the Chicago, Rock Island & Pacific Railway Company attached as Exhibit A to the affidavit of M. A. Peterson has the following provision:

471 "94th Street Stock Yards, Chicago, Ill. The rails of Chicago, Rock Island & Pacific Railway do not reach Union Stock Yards, Chicago, Ill. The C., R. I. & P. Stock Yards at Chicago, Ill., are located at 94th street, and the Chicago rates named herein cover transportation charges between stations named and C., R. I. & P. 94th Street Stock Yards. (Reissue.)

"Shipments to or from Union Stock Yards, etc. Charges as follows must be made in addition to the regular tariff rates on all C. L. shipments of freight (except on dressed beef and packing house products) received from or delivered to industries located on the tracks of the following roads:

"Chicago Junction R'y (Union Stock Yards and Indiana State Line Divisions), Chicago, $2.00 per car.

"Northern Indiana R. R., Hammond, Ind., $1.50 per car. (Reissue.)

"Agents should be particular to see that shipments are waybilled to the Union Stock Yards, Chicago, or to Washington Heights (when for 94th Street Stock Yards), as directed by shippers. (Reissue.)"

That in the freight tariff of the Illinois Central Railroad Company attached to affidavit of W. E. Keepers there is the following provision:

"To and from Union Stock Yards.

"The rates on live stock, carloads, published in tariff as amended, to and from Chicago, Ill., will apply when delivered to or shipped from this company's stock yards at Hawthorne, Ill., or Fordham, Ill., and do not include the cost of delivery to or from the Union Stock Yards, Chicago, Ill.

"The terminal charge provided for in I. C. R. R. Tariff No. 1–A, I. C. C. No. A–5950 or subsequent issues, will be assessed in addition to the rates published in this tariff on live stock, carloads, delivered in or shipped from the Union Stock Yards, Chicago, Ill.

"Agents will insert in live stock contracts for shipments destined to or shipped from the Union Stock Yards, the additional terminal charge referred to in the foregoing paragraph, as provided in I. C. R. R. Tariff No. 1–A, I. C. C. No. A–5950 or subsequent issues. (File M–320—U. S. Yds.)"

That the tariff of the Chicago, Milwaukee & St. Paul Railway Company attached as Exhibit A to the affidavit of J. H. Hiland is on its face a tariff on live stock in carloads between "Chicago, Ill. (Galewood Stock Yards)," and other stations, and said tariff contains the following provision:

"Terminal charge.

"Note.—This company's railway does not reach the Chicago Union Stock Yards, and the rates given herein cover the transportation charges between the stations named and Galewood, Ill., Stock Yards, only.

"$2.00 per car in addition will be charged on live stock, carloads, when consigned to or from the Chicago Union Stock Yards. This terminal charge must be entered separately by waybilling agent in 'freight charge' column of waybill, also inserted on bill of lading and live stock contract."

That the tariff of the Chicago, Burlington & Quincy Rail-
472 road Company attached as Exhibit B to the affidavit of George H. Crosby, is on its face a tariff on live stock between "Chicago (Company's Stock Yards at Hawthorne)" and other stations. That throughout the said tariff, wherever the word "Chicago" is used by appropriate reference, attention is called to a footnote as follows:

"These rates apply only to and from company's stock yards at Hawthorne, Ill. See last note, page 69, for further information."

On page 69 of said tariff is the following provision:

"Live stock to or from Union Stock Yards, Chicago, Ill."

"The rates herein published do not include delivery in Union Stock Yards, Chicago, Ill., and live stock under these rates will be delivered to and taken from the company's stock yards at Hawthorne, Ill.

"In case delivery is desired in the Union Stock Yards, Chicago, or shipments are made therefrom, a terminal charge of $2.00 per car will be made for that service, which will be added to the rates herein published to and from Chicago.

"Agents in issuing live stock contracts for shipments destined to or from Union Stock Yards must insert the terminal charge in live stock contract, in addition to the rate to and from Chicago."

That the tariff of the Atchison, Topeka & Santa Fe Railway attached as Exhibit A to the affidavit of C. B. Strohm, is, on its face, a tariff on live stock between certain stations, and "Chicago (Corwith Station)."

That said tariff contains the following provision:

"Important—terminal charges.

"The live-stock station and stock yards of the A., T. & S. F. Ry. Co., in Chicago, are located at Corwith, and the rates named herein as applicable to Chicago only apply to live stock intended for delivery at the stock yards of said company at Corwith in said city.

"Upon all live stock consigned to the Union Stock Yards in Chicago or to industries located on the Union Stock Yards Railway or the Indiana State Line Railway (Chicago Junction Railway, lessee), and transported and delivered to said Union Stock Yards or to said industries located on said Union Stock Yards Railway or the Indiana State Line Railway aforesaid, an additional charge of two dollars ($2.00) per car will be added to the rates applicable to Corwith, for transporting such cars to said Union Stock Yards or to said industries on said Union Stock Yards or the Indiana State Line Railway, for delivery thereat; and one dollar and a half ($1.50) per car as a terminal charge will be made in addition to the Chicago rates on shipments received from or delivered to the Northern Indiana Railroad at Hammond.

"The attention of the shipper must be and is called to the fact that the transportation charge on live stock delivered at our own
473 yards at Corwith in Chicago will be two dollars ($2.00) per car less than when delivered at the Union Stock Yards at Chicago, or at industries located on the Union Stock Yards Railway or the Indiana State Line Railway, and the agent should ascertain definitely at which point the shipper desires delivery to be made. The live-stock contract must then be filled out so as to show the correct destination and rate as provided by the tariff and amendments.

"Care must also be taken to have the stock correctly billed, either to Corwith in Chicago, or Union Stock Yards at Chicago, or industries located on the Union Stock Yards Railway or the Indiana State Line Railway, as designated by the shipper, and the correct rate shown in the billing.

"Bills of lading covering freight to and from the Union Stock Yards, or industries located on the Union Stock Yards Railway or

the Indiana State Line Railway must provide for the above terminal charges.

"In waybilling shipments destined to or coming from the Union Stock Yards, etc., the terminal charges, if any, must be shown separately in the freight column."

It is further stipulated and agreed that in all of the waybills attached as exhibits to the various affidavits herein, the item of $2.00 charged for the terminal services is entered separately from the freight charge.

It is further stipulated and agreed by and between the parties hereto that this stipulation may be printed in the record, the purpose of the stipulation being to avoid the printing of those portions of the said exhibits which have no bearing upon the issues to be decided herein.

L. A. SHAVER,
Solicitor for Appellant.
WILLIAM D. MCHUGH,
Solicitor for Appellees.

474 (Indorsed:) File No. 21,329. Supreme Court U. S., October term, 1908. Term No. 533. The Interstate Commerce Commission, appellant, vs. A. B. Stickney et al, receivers, &c., et al. Stipulation as to printing records. Filed Dec. 21st, 1908.

(Indorsement on cover:) File No. 21,329. Minnesota C. C. U. S. Term No. 533. The Interstate Commerce Commission, appellant, vs. Alpheus B. Stickney and Charles H. F. Smith, receivers of The Chicago Great Western Railway Company et al. Filed September 9th, 1908. File No. 21,329.

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In the Supreme Court of the United States.

OCTOBER TERM, 1908.

INTERSTATE COMMERCE COMMISSION
v.
A. B. STICKNEY ET AL. } No. 533.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA, THIRD DIVISION.

MOTION TO ADVANCE.

On behalf of the appellant the Solicitor-General respectfully moves the court to advance the above-entitled cause for hearing during the present term, for the following reasons:

1. This is an appeal by the Interstate Commerce Commission from an interlocutory order of injunction granted by the Circuit Court of the United States for the District of Minnesota in a suit brought by A. B. Stickney and others under the provisions of section 16 of the act to regulate commerce, as amended and approved June 29, 1906, and enjoining the enforcement of an order of the Interstate Commerce Commission prescribing a charge of $1 per car as the maximum charge

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to be made for the delivery of live stock in the Union Stock Yards at Chicago by the plaintiff railway companies.

2. The act to regulate commerce, approved February 4, 1887, as amended June 29, 1906, in section 16, makes the provisions of "An act to expedite the hearing and determination of suits in equity," etc., approved February 11, 1903, applicable to all such suits, and said section provides that cases of this character shall have in this court "priority in hearing and determination over all other causes except criminal causes."

I am authorized to state that counsel for the appellees concur in this motion.

HENRY M. HOYT,
Solicitor-General.

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